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Part 1

Nature of Self-Government Local Governments

7-1-101. Self-government powers. As provided by Article XI, section 6, of the Montana constitution, a local government unit with self-government powers may exercise any power not prohibited by the constitution, law, or charter. These powers include but are not limited to the powers granted to general power governments.

History: En. 47A-7-101 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-101.

7-1-102. Authorization for self-government services and functions. A local government with self-government powers may provide any services or perform any functions not expressly prohibited by the Montana constitution, state law, or its charter. These services and functions include but are not limited to those services and functions which general power government units are authorized to provide or perform.

History: En. 47A-7-102 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-102.

7-1-103. General power government limitations not applicable. A local government unit with self-government powers which elects to provide a service or perform a function that may also be provided or performed by a general power government unit is not subject to any limitation in the provision of that service or performance of that function except such limitations as are contained in its charter or in state law specifically applicable to self-government units.

History: En. 47A-7-103 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-103.

7-1-104. Legislative power vested in legislative bodies. The powers of a self-government unit, unless otherwise specifically provided, are vested in the local government legislative body and may be exercised only by ordinance or resolution.

History: En. 47A-7-104 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-104.

7-1-105. State law applicable until superseded. All state statutes shall be applicable to self-government local units until superseded by ordinance or resolution in the manner provided in chapter 5, part 1 and subject to the limitations provided in this part.

History: En. 47A-7-105 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-105.

7-1-106. Construction of self-government powers. The powers and authority of a local government unit with self-government powers shall be liberally construed. Every reasonable doubt as to the existence of a local government power or authority shall be resolved in favor of the existence of that power or authority.

History: En. 47A-7-106 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-106.

7-1-107 through 7-1-110 reserved.

7-1-111. Powers denied. A local government unit with self-government powers is prohibited the exercise of the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), 7-33-4128, or 7-33-4129, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power which it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of lands with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of natural resources and conservation with regard to a certificate of environmental compatibility and public need;

(8) any power that defines as an offense conduct made criminal by state statute or which defines an offense as a felony or which fixes the penalty or sentence for a misdemeanor in excess of a fine of $500 or 6 months' imprisonment or both such fine and imprisonment, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that it has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) any power that applies to or affects Title 87 (fish and game) or Title 75, chapter 7, part 1.

History: En. 47A-7-201 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-201.

7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that this section shall not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation shall affect the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises.

History: En. 47A-7-202 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-202.

7-1-113. Consistency with state regulation required. (1) A local government with self-government powers is prohibited the exercise of any power in a manner inconsistent with state law or administrative regulation in any area affirmatively subjected by law to state regulation or control.

(2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation.

(3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency.

History: En. 47A-7-203 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-203.

7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) All state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) Sections 7-3-104 through 7-3-106, 7-3-111 through 7-3-114, and 7-3-1101 through 7-3-1105;

(c) All laws establishing legislative procedures or requirements for units of local government;

(d) All laws regulating the election of local officials;

(e) All laws which require or regulate planning or zoning;

(f) Any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) Any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided.

History: En. 47A-7-204 by Sec. 1, Ch. 345, L. 1975; R.C.M. 1947, 47A-7-204.

Parts 2 through 20 reserved

Part 21

Counties

7-1-2101. Nature of county. (1) A county is the largest political division of the state having corporate power.

(2) Every county is a body politic and corporate and as such has the power specified in this code or in special statutes and such powers as are necessarily implied from those expressed.

History: (1)En. Sec. 4100, Pol. C. 1895; re-en. Sec. 2781, Rev. C. 1907; re-en. Sec. 4293, R.C.M. 1921; Cal. Pol. C. Sec. 3901; re-en. Sec. 4293, R.C.M. 1935; Sec. 16-101, R.C.M. 1947; (2)En. Sec. 4190, Pol. C. 1895; re-en. Sec. 2870, Rev. C. 1907; re-en. Sec. 4441, R.C.M. 1921; Cal. Pol. C. Sec. 4000; re-en. Sec. 4441, R.C.M. 1935; Sec. 16-801, R.C.M. 1947; R.C.M. 1947, 16-101, 16-801.

7-1-2102. Name of county. The name of a county designated in the law creating it is its corporate name, and it must be known and designated thereby in all actions and proceedings touching its corporate rights, property, and duties. This provision does not prevent county officers, when authorized by law, from suing in their name of office for the benefit of the county.

History: En. Sec. 4192, Pol. C. 1895; re-en. Sec. 2872, Rev. C. 1907; re-en. Sec. 4443, R.C.M. 1921; Cal. Pol. C. Sec. 4002; re-en. Sec. 4443, R.C.M. 1935; R.C.M. 1947, 16-803.

7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers;

(4) make such orders for the disposition or use of its property as the interests of its inhabitants require;

(5) levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by this code or by special statutes.

History: En. Sec. 1, p. 498, Bannack Stat.; re-en. Sec. 1, p. 433, Cod. Stat. 1871; re-en. Sec. 335, 5th Div. Rev. Stat. 1879; re-en. Sec. 744, 5th Div. Comp. Stat. 1887; amd. Sec. 4193, Pol. C. 1895; re-en. Sec. 2873, Rev. C. 1907; re-en. Sec. 4444, R.C.M. 1921; Cal. Pol. C. Sec. 4003; re-en. Sec. 4444, R.C.M. 1935; R.C.M. 1947, 16-804.

7-1-2104. Exercise of county power. A county's powers can only be exercised by the board of county commissioners or by agents and officers acting under their authority or authority of law.

History: En. Sec. 4191, Pol. C. 1895; re-en. Sec. 2871, Rev. C. 1907; re-en. Sec. 4442, R.C.M. 1921; Cal. Pol. C. Sec. 4001; re-en. Sec. 4442, R.C.M. 1935; R.C.M. 1947, 16-802.

7-1-2105 through 7-1-2110 reserved.

7-1-2111. Classification of counties. For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the several counties of this state shall be classified according to that percentage of the true and full valuation of the property therein upon which the tax levy is made, as follows:

(1) first class—all counties having such a taxable valuation of $50 million or over;

(2) second class—all counties having such a taxable valuation of more than $30 million and less than $50 million;

(3) third class—all counties having such a taxable valuation of more than $20 million and less than $30 million;

(4) fourth class—all counties having such a taxable valuation of more than $15 million and less than $20 million;

(5) fifth class—all counties having such a taxable valuation of more than $10 million and less than $15 million;

(6) sixth class—all counties having such a taxable valuation of more than $5 million and less than $10 million;

(7) seventh class—all counties having such a taxable valuation of less than $5 million.

History: En. Sec. 1, Ch. 20, L. 1905; re-en. Sec. 2973, Rev. C. 1907; amd. Sec. 1, Ch. 70, L. 1915; amd. Sec. 1, Ch. 76, L. 1917; amd. Sec. 1, Ch. 24, Ex. L. 1919; re-en. Sec. 4741, R.C.M. 1921; re-en. Sec. 4741, R.C.M. 1935; R.C.M. 1947, 16-2419(part).

7-1-2112. Designation of county classification by county commissioners. (1) The several boards of county commissioners must, at their regular session in September of each year, make an order designating the class to which such county belongs, as determined by the taxable valuation of such county for the year in which such order is made, under and in accordance with the provisions of 7-1-2111.

(2) Such classification shall not change the government of the county then in existence until the next succeeding first Monday in January.

History: En. Sec. 4331, Pol. C. 1895; re-en. Sec. 3, Ch. 20, L. 1905; re-en. Sec. 2975, Rev. C. 1907; re-en. Sec. 4742, R.C.M. 1921; re-en. Sec. 4742, R.C.M. 1935; amd. Sec. 1, Ch. 43, L. 1941; amd. Sec. 1, Ch. 40, L. 1974; R.C.M. 1947, 16-2420.

Parts 22 through 40 reserved

Part 41

Municipalities

7-1-4101. Nature of municipalities. A city or town is a body politic and corporate with the general powers of a corporation and the powers specified or necessarily implied in this title or in special laws heretofore enacted.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; re-en. Sec. 4700, Pol. C. 1895; re-en. Sec. 3202, Rev. C. 1907; re-en. Sec. 4955, R.C.M. 1921; Cal Pol. C. Sec. 4354; re-en. Sec. 4955, R.C.M. 1935; R.C.M. 1947, 11-101.

7-1-4102. Name of municipality. Every city or town organized under this title is entitled "the city of ...." (naming it) or "the town of ...." (naming it) and by such name has perpetual succession.

History: En. Secs. 323, 324, 5th Div. Comp. Stat. 1887; en. Sec. 4703, Pol. C. 1895; re-en. Sec. 3205, Rev. C. 1907; re-en. Sec. 4958, R.C.M. 1921; re-en. Sec. 4958, R.C.M. 1935; R.C.M. 1947, 11-104(part).

7-1-4103. Repealed. Sec. 30, Ch. 455, L. 1979.

7-1-4104. Repealed. Sec. 30, Ch. 455, L. 1979.

7-1-4105 through 7-1-4110 reserved.

7-1-4111. Classification of municipalities. (1) Every city having a population of 10,000 or more is a city of the first class.

(2) Every city having a population of less than 10,000 and more than 5,000 is a city of the second class.

(3) Every city having a population of less than 5,000 and more than 1,000 is a city of the third class.

(4) Every municipal corporation having a population of less than 1,000 and more than 300 is a town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part); amd. Sec. 1, Ch. 250, L. 1979.

7-1-4112. Exceptions from classification system. Notwithstanding the provisions of 7-1-4111:

(1) every municipal corporation having a population of more than 5,000 and less than 7,500 may, by resolution adopted by the city council pursuant to 7-1-4114 through 7-1-4118, be either a second-class city or a third-class city; and

(2) every municipal corporation having a population of more than 1,000 and less than 2,500 may, by resolution adopted by the city or town council, as the case may be, pursuant to 7-1-4114 through 7-1-4118, be either a city or town.

History: En. Sec. 4710, Pol. C. 1895; re-en. Sec. 3206, Rev. C. 1907; re-en. Sec. 4959, R.C.M. 1921; re-en. Sec. 4959, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1947; amd. Sec. 1, Ch. 126, L. 1969; R.C.M. 1947, 11-201(part).

7-1-4113. Basis of classification. The census taken under the direction of the congress of the United States in 1890 and every 10 years thereafter shall be the basis upon which the respective populations of said municipal corporations shall be determined, unless a direct enumeration of the inhabitants thereof be made by the state or municipal corporation, in which case such direct enumeration constitutes such basis.

History: En. Sec. 4711, Pol. C. 1895; re-en. Sec. 3207, Rev. C. 1907; re-en. Sec. 4960, R.C.M. 1921; re-en. Sec. 4960, R.C.M. 1935; R.C.M. 1947, 11-202.

7-1-4114. Advance in classification of municipalities. Whenever it manifestly appears to a city or town council from the last federal, state, county, city, or town census that such city or town has the requisite population to entitle it to be classified as provided in 7-1-4111 and 7-1-4112, such city or town must be advanced as provided in 7-1-4115.

History: En. Sec. 4950, Pol. C. 1895; amd. Sec. 1, p. 225, L. 1897; re-en. Sec. 3447, Rev. C. 1907; re-en. Sec. 4969, R.C.M. 1921; re-en. Sec. 4969, R.C.M. 1935; R.C.M. 1947, 11-301.

7-1-4115. Procedure to advance municipal classification. (1) If it appears by such census that the city or town contains the requisite population to be advanced, the council must thereupon by resolution declare, as the case may be, that:

(a) the town is advanced to a city of the first, second, or third class;

(b) a city of the third class is advanced to a city of the second or first class; or

(c) a city of the second class is advanced to a city of the first class.

(2) The city or town council must file a certified copy of such resolution in the office of the county clerk of the county and in the office of the secretary of state. Whereupon such town becomes a city of the first, second, or third class; a city of the third class becomes a city of the second or first class; and a city of the second class becomes a city of the first class, as the case may be, to be governed under the provisions of this code relative to cities and towns.

History: En. Sec. 4951, Pol. C. 1895; amd. Sec. 2, p. 225, L. 1897; re-en. Sec. 3448, Rev. C. 1907; re-en. Sec. 4970, R.C.M. 1921; re-en. Sec. 4970, R.C.M. 1935; R.C.M. 1947, 11-302.

7-1-4116. Officers of reclassified municipality. The first election of officers of the new municipal corporation organized under the provisions of 7-1-4114 through 7-1-4118 must be at the first annual municipal election after such proceedings, and the old officers remain in office until the new officers are elected and qualified.

History: En. Sec. 4952, Pol. C. 1895; re-en. Sec. 3449, Rev. C. 1907; re-en. Sec. 4971, R.C.M. 1921; re-en. Sec. 4971, R.C.M. 1935; R.C.M. 1947, 11-303.

7-1-4117. Status of legislative actions taken prior to reclassification. All ordinances, bylaws, and resolutions adopted by the old municipal corporation, as far as consistent with the provisions of this code relative to cities and towns, remain in force until repealed by the council of the new municipal corporation.

History: En. Sec. 4953, Pol. C. 1895; re-en. Sec. 3450, Rev. C. 1907; re-en. Sec. 4972, R.C.M. 1921; re-en. Sec. 4972, R.C.M. 1935; R.C.M. 1947, 11-304.

7-1-4118. Reduction in classification of municipalities. (1) Whenever it appears by the census taken by the United States, the state, or otherwise that the population of a city of the first or second class has decreased so as to be insufficient in number to entitle it to be a city of that class, the council must thereupon, by resolution declare that such city be reduced to a city of the second class or town as the case may be.

(2) A certified copy of such resolution must be filed in the office of the county clerk and in the office of the secretary of state, and thereafter such city becomes a city of the second class or a town, as the case may be, to be governed under the provisions of this code relative to cities and towns.

(3) The provisions of 7-1-4116 and 7-1-4117 apply to this section.

History: En. Sec. 4954, Pol. C. 1895; re-en. Sec. 3451, Rev. C. 1907; re-en. Sec. 4973, R.C.M. 1921; re-en. Sec. 4973, R.C.M. 1935; R.C.M. 1947, 11-305.

7-1-4119 and 7-1-4120 reserved.

7-1-4121. General definitions. As used in 7-1-4121 through 7-1-4149, unless otherwise provided, the following definitions apply:

(1) "Charter" means a written document defining the powers, structure, privileges, rights, and duties of the government and limitations thereon.

(2) "Chief executive" means the elected executive in a government adopting the commission-executive form, the manager in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

(3) "Elector" means a resident of the municipality qualified and registered to vote under state law.

(4) "Employee" means a person other than an officer who is employed by a municipality.

(5) "Executive branch" means that part of the municipality, including departments, offices, and boards, charged with implementing actions approved and administering policies adopted by the governing body of the local government or performing the duties required by law.

(6) "Governing body" means the commission or town meeting legislative body established in the alternative form of local government.

(7) "Guideline" means a suggested or recommended standard or procedure to serve as an index of comparison and is not enforceable as a regulation.

(8) "Law" means a statute enacted by the legislature of Montana and approved and signed by the governor or a statute adopted by the people of Montana through statutory initiative procedures.

(9) "Municipality" means an entity which incorporates as a city or town.

(10) "Office of the municipality" means the permanent location of the seat of government from which the records administrator, or the office of the clerk of the governing body where one is appointed, carries out his duties.

(11) "Officer" means a person holding a position with a municipality which is ordinarily filled by election or, in those municipalities with a manager, the manager.

(12) "Ordinance" means an act adopted and approved by a municipality, having effect only within the jurisdiction of the local government.

(13) "Person" means any individual, firm, partnership, company, corporation, trust, trustee, assignee or other representative, association, or other organized group.

(14) "Plan of government" means a certificate submitted by a governing body that documents the basic form of government selected, including all applicable suboptions. The plan must establish the terms of all officers and the number of commissioners, if any, to be elected.

(15) "Political subdivision" refers to a local government, authority, school district, or multicounty agency.

(16) "Population" means the number of inhabitants as determined by an official federal, state, or local census or official population estimate approved by the department of community affairs.

(17) "Printed" means the act of reproducing a design on a surface by any process as defined by 1-1-203(3).

(18) "Public agency" means a political subdivision, Indian tribal council, state or federal department or office, or the Dominion of Canada or any provincial department or office or political subdivision thereof.

(19) "Public property" means any and all property owned by a municipality or held in the name of a municipality by any of the departments, boards, or authorities of the local government.

(20) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term "real property", including not only fee simple absolute but also all lesser interests such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(21) "Reproduced" means the act of reproducing a design on any surface by any process.

(22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken.

(23) "Service" means an authorized function or activity performed by local government.

(24) "Structure" means the entire governmental organization through which a local government carries out its duties, functions, and responsibilities.

History: En. Sec. 1, Ch. 455, L. 1979.

Compiler's Comments

Codification. Sec. 31, Ch. 455, L. 1979, provided: "Sections 1 through 29 are intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions contained in Title 7, chapter 1, part 41, apply to sections 1 through 29."

7-1-4122. Distribution of powers. (1) A municipality has legislative, executive, and judicial powers.

(2) All legislative powers are vested in the governing body of the municipality.

(3) Executive powers are vested as provided in the form of government adopted by the municipality.

(4) The judicial powers of a municipality are vested in the municipal court.

History: En. Sec. 23, Ch. 455, L. 1979.

7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by state law;

(4) exercise any power granted by state law;

(5) levy any tax authorized by state law;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided by the municipality or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs.

History: En. Sec. 24, Ch. 455, L. 1979.

7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees which could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain as provided in Title 70, chapter 30, any interest in property to provide any service or facility authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines; and

(23) exercise powers not inconsistent with law necessary for effective administration of authorized services and functions.

History: En. Sec. 25, Ch. 455, L. 1979.

7-1-4125. Limit on liability. (1) As provided in Article II, section 18, of the Montana constitution, a municipality has no immunity from suit for injury to a person or property, except as may be specifically provided by law by a two-thirds vote of each house of the legislature.

(2) A local government has the right but not the duty to purchase insurance to protect against claims for injury to a person or property.

(3) Local governments are subject to the provisions of Title 2, chapter 9.

History: En. Sec. 26, Ch. 455, L. 1979.

7-1-4126. Administrative rules. The governing body may by ordinance authorize the chief executive to adopt administrative rules. All administrative rules shall be entered in an administrative code that shall be available in the office of the municipality.

History: En. Sec. 2, Ch. 455, L. 1979.

7-1-4127. Publication of notice. (1) When a municipality is required to publish notice, publications shall be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

(2) The newspaper shall be:

(a) of general paid circulation with a second-class mailing permit;

(b) published at least once a week;

(c) published in the county where the municipality is located;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(3) In a county where no newspaper meets these qualifications, publication shall be made in a qualified newspaper in an adjacent county.

(4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.

History: En. Sec. 3, Ch. 455, L. 1979.

7-1-4128. Notice. When notice of a hearing or other official act is required, the following shall apply:

(1) The notice shall be published two times with at least 6 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice.

(3) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.

History: **En. Sec. 4, Ch. 455, L. 1979.**

7-1-4129. Mail notice. (1) Unless otherwise specifically provided, when a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice properly addressed in the United States mail with postage paid at the first-class rate;

(b) sending the notice by registered or certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class when notice is to be given by mail to all electors or residents of a municipality.

(2) The notice shall contain:

(a) the date, time, and place at which the hearing or other action will be taken;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who can be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement shall apply only to persons whose addresses are known.

History: **En. Sec. 5, Ch. 455, L. 1979.**

7-1-4130. Petition. (1) Whenever a petition is authorized, unless the section authorizing the petition establishes different criteria, it shall be valid if it is signed by 15% of the electors of the municipality and meets the following requirements:

(a) contains a statement of the purpose for which it is circulated, sufficient to meet the specific criteria set out in the section authorizing the petition;

(b) each signature is followed by the printed name of the signer, the address of the signer's place of residence, and the date of the signing; and

(c) the petition contains the date it was first circulated and a statement that all signatures must be collected within 90 days of that date.

(2) Unless otherwise provided, all petitions shall be filed with the county election administrator, who shall determine the sufficiency of the signatures.

No petition filed after the deadline for filing the petition, if any, shall be considered.

(3) Within 10 working days of the date the petition was filed, the county election administrator shall determine the adequacy of the petition.

(4) Inadequate petitions shall be returned but may be amended or supplementary signatures may be obtained, and the petition may be refiled prior to the deadline for filing the petition.

(5) Within 10 days of its second filing, the county election administrator shall again determine the adequacy of the petition. If it is still determined inadequate, it shall be rejected without prejudice to the filing of a new petition to the same effect.

(6) If a petition is determined adequate, the county election administrator shall:

(a) certify its adequacy and submit it to the governing body without delay;

(b) submit a copy of the petition to the attorney of the municipality.

(7) A person may in writing withdraw his signature from a previously filed petition at any time prior to final action of the governing body.

(8) (a) The attorney for the municipality shall prepare and transmit to the governing body without delay a concise statement not exceeding 100 words. This statement shall express a true and impartial explanation of the purpose of the proposed ballot issue in plain, easily understood language. The statement may not intentionally be an argument and may not intentionally be written so as to create prejudice for or against the measure.

(b) At the same time the statement of purpose is prepared, the attorney shall prepare statements of the implications of a vote for or against a ballot issue. The statements of implication may be no more than 25 words each and shall be in simple, impartial language clearly explaining the meaning of a vote for and a vote against the issue.

(c) Prior to an election or an official action involving a petition issue, the governing body shall publish copies of the statement of purpose and statement of implications to the procedure established in 7-1-4128.

(9) The department of community affairs, in cooperation with the secretary of state, shall prepare and provide each municipality with:

(a) a standard petition form;

(b) sample petition forms for initiatives, referendums, and recall elections; and

(c) sample petition forms for creation of districts.

(10) Each municipality shall make available to the public on request sample petition forms.

History: **En. Sec. 6, Ch. 455, L. 1979.**

7-1-4131. Public hearing. (1) When required, the governing body shall conduct public hearings for the purpose of providing reasonable opportunity for citizen participation prior to final decisions.

(2) At a minimum, a public hearing shall provide for submission of both oral and written testimony for and against the action or matter at issue. If the hearing is not held before the ultimate decision makers, provision shall be made for the transmittal of a summary or transcript of the testimony received to the ultimate decision makers prior to their determination.

(3) Public hearings may be held at regular or special meetings of the governing body.

(4) Petitions and letters received by the governing body or executive prior to the hearing shall be entered by reference into the minutes of the governing body and considered as other testimony received at the hearing.

(5) Hearings may be adjourned from day to day or to a date certain.

(6) Except for budget hearings, the governing body may designate a subcommittee or hearing examiner to conduct public hearings.

History: En. Sec. 7, Ch. 455, L. 1979.

7-1-4132. Protest. (1) Whenever a protest is authorized, it is sufficient if it is in writing, signed, and contains the following:

(a) a description of the action protested sufficient to identify the action against which the protest is lodged;

(b) a statement of the protestor's qualifications to protest the action against which the protest is lodged, including ownership of property affected by the action; and

(c) the address of the person protesting.

(2) Protests shall be submitted as provided by law and ordinance. The person receiving protests for a municipality shall note on each protest the date it was received.

(3) A protest which contains the required information may be signed by more than one person. A protest signed by more than one person is a valid protest by each signer.

(4) A person may in writing withdraw a previously filed protest at any time prior to final action by the governing body.

(5) Signers are encouraged to print their names after their signatures.

History: En. Sec. 8, Ch. 455, L. 1979.

7-1-4133. Signatures. (1) The signatures and addresses on petitions shall be the same as the signatures and addresses on voter registration cards and, if not registered or if not required by law to be an elector, their common signature. If the elector has signed using an initial letter only in place of a name written on the registry card or using a name or the initial letter of a name that is not on the registry card, the signature may nevertheless be counted so long as the signature, taken as a whole, bears sufficient similarity to the signature on the registry card as to provide reasonable certainty of its authenticity.

(2) The signatures on protests and waivers shall be the accepted common signatures.

History: En. Sec. 9, Ch. 455, L. 1979.

7-1-4134. Rights on behalf of government or corporation. The chief executive of a municipality or political subdivision of the state, the responsible agent of a federal or state agency, or the chief executive officer of a corporation may exercise the right of petition, protest, or voting on behalf of property owned by the government or corporation.

History: En. Sec. 10, Ch. 455, L. 1979.

7-1-4135. Posting. (1) The governing body shall specify by resolution a public location for posting information and shall order erected a suitable posting board.

(2) When posting is required, a copy of the document shall be placed on the posting board, and a copy shall be available at the municipal office.
History: En. Sec. 11, Ch. 455, L. 1979.

7-1-4136. Oaths. The chief executive and all elected municipal officers may administer oaths.
History: En. Sec. 12, Ch. 455, L. 1979.

7-1-4137. Oath of office. Every elected municipal officer shall take the oath of office prescribed in Article III, section 4, of the Montana constitution. The oath of office, certified by the official before whom the same was taken, shall be filed with the county election administrator before the officer exercises any official duties.
History: En. Sec. 13, Ch. 455, L. 1979.

7-1-4138. Public servants. All municipal officers and employees are public servants for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.
History: En. Sec. 14, Ch. 455, L. 1979.

7-1-4139. Waiver of mail notice or protest. (1) If all persons entitled to mail notice waive in writing the mail notice requirement, the governing body may proceed without the required mail notice.

(2) If all persons entitled to protest an action waive in writing their right to protest, the governing body may proceed without publishing notice or meeting other requirements designed to permit protests to be filed.

(3) A waiver is sufficient if it is in writing, signed, and contains the following:

(a) a description of the mailed notice or protest right waived;

(b) a statement of the protestor's qualifications to waive the mailed notice or protest right;

(c) the address of the person;

(d) a statement that the waiver of notice is voluntarily and knowingly given, with knowledge of the signer's constitutional rights to notice.

(4) Waivers shall be submitted as provided by law and ordinance. The person receiving waivers for a local government shall note on each waiver the date it was received.

(5) A waiver which contains the required information may be signed by more than one person. A waiver signed by more than one person is a valid waiver by each signer.

(6) Signers are encouraged to print their names after their signatures.
History: En. Sec. 15, Ch. 455, L. 1979.

7-1-4140. Facsimile signature. Any officer or employee may use a facsimile signature or seal as provided in Title 2, chapter 16.
History: En. Sec. 16, Ch. 455, L. 1979.

7-1-4141. Public meeting required. (1) All meetings of municipal governing bodies, boards, authorities, committees, or other entities created by a municipality shall be open to the public except as provided in 2-3-203.

(2) Appropriate minutes shall be kept of all public meetings and shall be made available upon request to the public for inspection and copying.

History: **En. Sec. 17, Ch. 455, L. 1979.**

7-1-4142. Public participation. Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana constitution and Title 2, chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.

History: **En. Sec. 18, Ch. 455, L. 1979.**

7-1-4143. Participation. In any meeting required to be open to the public, the governing body, committee, board, authority, or entity shall adopt rules for conducting the meeting, affording citizens a reasonable opportunity to participate prior to the final decision.

History: **En. Sec. 19, Ch. 455, L. 1979.**

7-1-4144. Public records. (1) Except as provided in subsection (2), all records and other written materials in the possession of a municipality shall be available for inspection and reproduction by any person during normal office hours. The governing body may impose reasonable fees for providing copies of public records.

(2) Personal records, medical records, and other records which relate to matters in which the right to individual privacy exceeds the merits of public disclosure shall not be available to the public unless the person they concern requests they be made public.

(3) Except as provided by law and as determined by the chief law enforcement administrator, law enforcement records which relate to matters in which the right to individual privacy or law enforcement security exceeds the merits of public disclosure shall not be available to the public.

History: **En. Sec. 20, Ch. 455, L. 1979.**

7-1-4145. State reports. (1) Municipal governing bodies, chief executives, officers, employees, departments, boards, and authorities shall file with state agencies in a timely fashion all reports and information required by state law.

(2) The department of community affairs shall coordinate to the greatest extent possible the collection of data by state and federal agencies in order to minimize the requests of municipalities and to maximize access to information collected on municipalities.

(3) Prior to requesting reports from a municipality, all state agencies shall notify the department of community affairs of the intended request.

History: **En. Sec. 21, Ch. 455, L. 1979.**

7-1-4146. Reports of departments, boards, and authorities. (1) All departments, boards, and authorities shall file an annual report with the chief executive, who shall compile the reports and present them to the governing body.

(2) The chief executive may specify the form, content, and deadline for filing reports.

History: **En. Sec. 22, Ch. 455, L. 1979.**

7-1-4147. State technical advice and assistance. (1) All state agencies are authorized and encouraged to provide technical assistance to municipalities.

(2) The technical assistance services shall not include those that can be as reasonably and expeditiously obtained through business channels.

(3) State agencies are encouraged to develop the capacity to provide technical advice and assistance without charge to municipalities, but they are also encouraged to establish service charges for special or extraordinary technical advice.

(4) The department of community affairs shall coordinate technical advice and assistance provided to municipalities by state agencies.

(5) State agencies may lend personnel, equipment, and machinery to municipalities.

History: En. Sec. 27, Ch. 455, L. 1979.

7-1-4148. Penalty. Where a municipality is required by state law to provide information to a state agency and fails to provide the required information, the department of community affairs may issue an order stopping payment of any state financial aid to the municipality. Upon provision of the information, all financial aid which was stopped because of failure to provide the information shall be paid to the municipality.

History: En. Sec. 28, Ch. 455, L. 1979.

7-1-4149. Applicability. (1) Except as provided in subsection (2), a provision of 7-1-4121 through 7-1-4148 applies only in the absence of other laws governing the same subject matter.

(2) The governing body may by ordinance adopt the procedures and provisions contained in 7-1-4121 through 7-1-4148 and make them applicable to all proceedings before the body.

History: En. Sec. 29, Ch. 455, L. 1979.

CHAPTER 2

CREATION, ALTERATION, AND ABANDONMENT OF LOCAL GOVERNMENTS

Part 1 — General Provisions Applicable to Local Government

Section

7-2-101. Transcript of records upon alteration of boundary of local government.
7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government.
7-2-103. Collection of taxes upon alteration of boundary of local government.

Parts 2 through 20 reserved

Part 21 — General Provisions Applicable to Counties

7-2-2101. Repealed. Sec. 21, Ch. 250, L. 1979.
7-2-2102. Apportionment of liabilities and assets upon creation or enlargement of county.
7-2-2103. Qualifications for municipality or village to be county seat.
7-2-2104. Transfer of certain records upon alteration of boundary of county.

7-2-2105. Establishment of townships.

Part 22 — Creation of New Counties by Petition

7-2-2201. Authorization to create new counties.
7-2-2202. Limitations on creation of new counties.
7-2-2203. Limitation on location of boundary of new county.
7-2-2204. Basis for determination of assessed valuation.
7-2-2205. Petition for creation of new county.
7-2-2206. Contents of petition.
7-2-2207. Affidavits to be attached to petition.
7-2-2208. Role of board of county commissioners — intercounty communication.
7-2-2209. Hearing and notice on petition.
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7-2-2211. Hearing on petition — protest.
7-2-2212. Exclusions and additions of territory upon petition.
7-2-2213. Resolution of board of county commissioners.
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7-2-2228. Judicial district for new county.
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7-2-2242. Conduct of business by commission.
7-2-2243. Compensation of commission members.
7-2-2244. Role of commission.
7-2-2245. Commission to certify information to county commissioners.
7-2-2246. Settlement between counties following adjustment of indebtedness.
Sections 7-2-2247 through 7-2-2250 reserved.
7-2-2251. Collection of delinquent taxes.
7-2-2252. Assessment and collection of taxes for new county.
7-2-2253. Procedure to transfer money to school and road funds.
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7-2-2255. Transfer of court files and actions.
7-2-2256. Publication by posting of notice.

Part 23 — Organization of New Counties Created by Legislation

7-2-2301. Meeting and organization of board of county commissioners upon creation of new county by legislature.
7-2-2302. Role of county clerk of county created by legislature.
7-2-2303. Applicability of general laws to new counties and officers.
Sections 7-2-2304 through 7-2-2310 reserved.
7-2-2311. Designation of temporary county seat.
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7-2-2741. Processing of claims against abandoned county.
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Part 41 — Organization and Incorporation of New Municipalities

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Part 43 — Annexation of Contiguous Land

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Part 44 — Annexation of Contiguous Government Land

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Part 46 — Annexation by Petition

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7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.
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Part 47 — Annexation With the Provision of Services

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7-2-4735. Guidelines for new boundaries of municipality.
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Part 49 — Disincorporation of Municipalities

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7-2-4902. Disincorporation by election.
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7-2-4911. Certification of financial condition.
7-2-4912. Management of unencumbered cash.
7-2-4913. Release of public property to county commissioners.
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Part 1

General Provisions Applicable to Local Government

7-2-101. Transcript of records upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town in this state and annexed to any other county, city, or town:

(1) it shall be the duty of the proper officer of such county, city, or town to which said territory shall be annexed to demand from the proper officer of the county, city, or town having custody of the public records of the territory a transcript of all public records pertaining to such territory; and

(2) it shall be the duty of such officer from whom they shall be demanded to furnish such authenticated transcripts of all such records in his office, which shall be paid for, after they shall be so furnished, by the county, city, or town to which said territory shall be annexed.

History: En. Sec. 1, Ch. 36, L. 1911; re-en. Sec. 4418, R.C.M. 1921; re-en. Sec. 4418, R.C.M. 1935; R.C.M. 1947, 16-611.

7-2-102. Apportionment of indebtedness and credits upon alteration of boundary of local government. When any territory shall be detached from any county, city, or town of this state and annexed to any other county, city, or town therein, such county, city, or town to which the same shall be annexed shall be liable to the county, city, or town from which the territory was so detached for its just share of liabilities and indebtedness and shall receive a just share of the credits from the county, city, or town from which the same shall have been detached, which shall be apportioned by ascertaining what ratio the portion detached bears to the territory from which the same was detached. The last prior assessment shall be used as a basis in determining the same.

History: En. Sec. 2, Ch. 36, L. 1911; re-en. Sec. 4419, R.C.M. 1921; re-en. Sec. 4419, R.C.M. 1935; R.C.M. 1947, 16-612.

7-2-103. Collection of taxes upon alteration of boundary of local government. Subject to the provisions of part 27 of this chapter, if any territory is detached from any county, city, or town and is annexed to any other county, city, or town therein, it does not invalidate or interfere with the collection of taxes in such territory and the taxes shall be collected by and the returns made to the county to which the territory is attached in the manner provided by law for levying and collecting taxes.

History: En. Sec. 3, Ch. 36, L. 1911; re-en. Sec. 4420, R.C.M. 1921; re-en. Sec. 4420, R.C.M. 1935; R.C.M. 1947, 16-613; amd. Sec. 2, Ch. 250, L. 1979.

Parts 2 through 20 reserved

Part 21

General Provisions Applicable to Counties

7-2-2101. Repealed. Sec. 21, Ch. 250, L. 1979.

7-2-2102. Apportionment of liabilities and assets upon creation or enlargement of county. (1) Every county which shall be enlarged or created from the territory taken from any other county or counties shall:

(a) be liable for a pro rata proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken; and

(b) be entitled to a pro rata proportion of the assets of the county or counties from which such territory is taken.

(2) The share of liabilities and assets shall be determined as provided by 7-2-2204 and 7-2-2244 through 7-2-2246.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2103. Qualifications for municipality or village to be county seat. No city, town, or village shall become the temporary or permanent county seat of any county organized under the provisions of part 22 or created by an act of the legislature unless such city or town shall have been incorporated in the manner provided by law or unless such village shall have been regularly platted and a plat thereof filed in the office of the county clerk and recorder and there be fifty qualified electors residing within the boundaries of such platted village.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; R.C.M. 1947, 16-503(part).

7-2-2104. Transfer of certain records upon alteration of boundary of county. (1) In the event territory is taken from one county and added to another county, such plats and records covering such territory taken shall be transferred to the enlarged county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said enlarged county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2105. Establishment of townships. The board of county commissioners must not set off or organize any new township unless a petition is presented to the board, signed by at least 50 citizens resident therein.

History: En. Sec. 18, p. 502, Bannack Stat.; re-en. Sec. 18, p. 436, Cod. Stat. 1871; re-en. Sec. 352, 5th Div. Rev. Stat. 1879; re-en. Sec. 757, 5th Div. Comp. Stat. 1887; re-en. Sec. 4231, Pol. C. 1895; re-en. Sec. 2895, Rev. C. 1907; re-en. Sec. 4468, R.C.M. 1921; re-en. Sec. 4468, R.C.M. 1935; R.C.M. 1947, 16-1102.

Part 22

Creation of New Counties by Petition

7-2-2201. Authorization to create new counties. New counties may, from time to time, be formed and created in this state from portions of one or more counties which shall have been created and in existence for a period of more than 2 years, in the manner set forth and provided in this part.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2202. Limitations on creation of new counties. (1) No new county shall be established which shall reduce any county to an assessed valuation of less than $12 million, inclusive of all assessed valuation as shown by the last preceding assessment.

(2) No new county shall be formed which contains an assessed valuation of property less than $10 million, inclusive of all assessed valuation, as shown by the last preceding assessment of the county or counties from which such new county is to be established.

(3) No new county shall be established which shall reduce the area of any existing county from which territory is taken to form such new county to less than 1,200 square miles of surveyed land, exclusive of all forest reserve and Indian reservations within old counties.

(4) No new county shall be formed which contains less than 1,000 square miles of surveyed land, exclusive of all forest reserve land or Indian reservations not open for settlement.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part).

7-2-2203. Limitation on location of boundary of new county. (1) Except as provided in subsection (2), no line of any new county shall pass within 15 miles of the courthouse situated at the county seat of the county sought to be divided.

(2) Such county line may be run within a distance of 10 miles of a county seat in cases where the natural contour of the county, by reason of mountain ranges or other topographical conditions, is such as to make it difficult to reach the county seat. In such cases, a petition signed by at least 50% of the registered electors in the proposed new county shall be presented to the judge of the district court in which the affected county is located, asking for the appointment of a commission of five disinterested individuals, who shall determine if the topographical conditions warrant the fixing of the county division lines closer than at 15 miles from the county seat, as such boundaries are legally fixed and determined at the date of the filing of the petition or petitions referred to in 7-2-2205 and 7-2-2212.

History: En. Sec. 1, Ch. 226, L. 1919; re-en. Sec. 4390, R.C.M. 1921; amd. Sec. 1, Ch. 106, L. 1929; re-en. Sec. 4390, R.C.M. 1935; amd. Sec. 6, Ch. 406, L. 1973; R.C.M. 1947, 16-501(part); amd. Sec. 263, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-2204. Basis for determination of assessed valuation. For the purposes of this part, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in Montana.

History: En. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4391, R.C.M. 1921; re-en. Sec. 4391, R.C.M. 1935; amd. Sec. 34, Ch. 566, L. 1977; R.C.M. 1947, 16-502.

7-2-2205. Petition for creation of new county. (1) Whenever it is desired to divide any county or counties and form a new county out of a portion of the territory of the then-existing county or counties, a petition shall be presented to the board of county commissioners of the county from which the new county is to be formed, in case said proposed new county is to be formed from but one county, or to the board of county commissioners of the county from which the largest area of territory is proposed to be taken for the formation of such new county, in case said new county is to be formed from portions of two or more existing counties.

(2) (a) The petition shall be signed by at least 50% of the registered electors of the proposed new county.

(b) In cases where the proposed new county is to be formed from portions of two or more counties, separate petitions shall be presented from the territory taken from each county, and each of the petitions shall be signed by at least 50% of the registered electors of the proposed portions.

(c) The signatures need not all be appended to one paper but may be signed to several petitions, which must be similar in form. When so signed, the several petitions may be fastened together and shall be treated and presented as one petition.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part); amd. Sec. 264, Ch. 571, L. 1979.

7-2-2206. Contents of petition. Such petition or petitions shall contain:

(1) a particular description of the boundaries of the proposed new county;

(2) a statement that no line thereof passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided in this part;

(3) a statement of the assessed valuation of such proposed county as shown by the last preceding assessment, inclusive of all assessed valuation;

(4) a statement of the surveyed area, in square miles, which will remain in the county or counties from which territory is taken to form such new county after such county is formed, and a statement of the surveyed area in square miles, which will be in the new county after formation;

(5) the name of the proposed new county;

(6) a prayer that such proposed new county be organized into a new county under the provisions of this part.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2207. Affidavits to be attached to petition. (1) There shall be attached and filed with said petition or petitions an affidavit of five qualified electors residing within each county sought to be divided, to the effect that:

(a) they have read said petition and examined the signatures affixed thereto and they believe that the statements therein are true;

(b) it is signed by at least 50% of the qualified electors, as herein provided, of the proposed new county or of the proposed portion thereof taken from each existing county, where the proposed new county is to be formed from portions of two or more existing counties;

(c) the signatures affixed thereto are genuine; and

(d) each of such persons so signing was, at the date of such signing, a qualified elector of such county therein sought to be divided.

(2) Such petition or petitions, so verified, and the verification thereof shall be accepted in all proceedings permitted or provided for in this part as prima facie evidence of the truth of the matters and facts therein set forth.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2208. Role of board of county commissioners — intercounty communication. (1) A board of county commissioners receiving a petition pursuant to 7-2-2205 shall be empowered and have jurisdiction to do and perform all acts provided for in this part for each of the several counties from which any proposed territory is to be taken and shall direct that a certified copy of all orders and proceedings had before such board shall be certified by the county clerk to the board of each of the several counties from which any territory is taken by the proposed new county.

(2) All officers of any such county shall comply with the orders of the board of county commissioners in the same manner as if said order had been duly made by the board of each respective county from which territory is proposed to be taken.

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2209. Hearing and notice on petition. (1) Upon the filing of such petition or petitions and affidavits with the clerk of the board of county commissioners, said clerk shall forthwith fix a date to hear the proof of the petitions and of any opponents thereto, which date must be not later than 30 days after the filing of such petition with the clerk of said board.

(2) The county clerk shall also, at the same time, designate a newspaper of general circulation published in the old counties but not within the proposed new county and also a newspaper of general circulation published within the boundaries of the proposed new county, if there be such, in which the county clerk shall order and cause to be published, at least once a week for 2 weeks preceding the date fixed for such hearing, a notice in substantially the following form:

Notice

Notice is hereby given that a petition has been presented to the board of county commissioners of .... County (naming the county represented by the board of county commissioners with which said petition was filed), praying for the formation of a new county out of portions of .... County and .... County (naming the county or counties of which it is proposed to form the new county), and that said petition will be heard by the board of county commissioners at its place of meeting (designating the city or town and the day and hour of the meeting to be so held), when and where all persons interested may appear and oppose the granting of said petition and make any objections thereto.

Dated at .... at ...., Montana.

...., County Clerk

History: En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).

7-2-2210. Bond to cover election costs. Said petitioners shall, on or before the date fixed for the hearing required by 7-2-2209, file with the board of county commissioners a bond, to be approved by said board, in an amount of $5,000, payable to the county in which said petition is filed and conditioned that the obligors named in said bond will pay to said county all expenses incurred in the election provided for in 7-2-2215, not exceeding the amount specified in said bond, in the event that at the election provided for in 7-2-2215, more than 50% of the votes cast at said election are "For the new county of .... (naming the proposed new county), No".

History: **En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(part).**

7-2-2211. Hearing on petition — protest. (1) At the time fixed for the hearing, the board of county commissioners shall hear the petitioners and any opponents and protestants upon the petition or protests filed on or before the time fixed for the hearing. The board may adjourn the hearing from time to time, but not for more than 10 days after the time fixed for the hearing, and shall receive the proof to establish or controvert the facts set forth in the petition.

(2) (a) No petition, protest, or petition for the exclusion of territory may be considered unless it is filed at least 1 day before the time fixed for the hearing.

(b) A petition for the exclusion of territory shall contain the names of not less than 50% of the registered electors of any territory to be excluded.

(c) All such territory being excluded must be in one block containing an area of not less than 36 square miles and be totally within one county and contiguous thereto.

(3) No withdrawals of signatures to the original petition for the creation of a proposed county shall be filed or considered which have not been filed with the county clerk on or before the date fixed for the hearing. No withdrawals of any signatures from the petition for the exclusion of territory may be received or considered which are not filed within 5 days after the filing of the petition for such exclusion of territory.

History: **En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(3); amd. Sec. 3, Ch. 250, L. 1979; amd. Sec. 265, Ch. 571, L. 1979.**

7-2-2212. Exclusions and additions of territory upon petition. (1) Except as provided in subsection (3), on final hearing, the board of commissioners, upon petition of not less than 50% of the registered electors (as shown by the official registration records on the day of the filing of the petition) of any territory lying within the proposed new county and contiguous to the boundary line of the proposed new county and of the old county from which such territory is proposed to be taken and lying entirely within the single old county and described in the petition, asking that this territory not be included within the proposed new county, must make such changes in the proposed boundaries as will exclude the territory from the new county and shall establish and define the boundaries. Petitions for exclusion shall be disposed of in the order in which they are filed with the clerk of the board.

(2) Except as provided in subsection (3), on final hearing, the board, upon petition of not less than 50% of the registered electors of any territory lying outside the proposed new county and contiguous to the boundary line

of the proposed new county and of the old county or counties from which such territory is proposed to be taken, asking that this territory be included within the proposed new county, must make such changes in the proposed boundaries as will include such territory in the new county and shall establish and define the boundaries.

(3) (a) The segregation of the territory from any old county or counties may not leave the county or counties with less than $12 million of assessed valuation, based upon the last assessment roll.

(b) No change or changes so made may result in reducing the valuation of the proposed new county to less than an assessed valuation of $10 million, inclusive of all assessed valuation.

(c) No change may be made which leaves the territory so excluded separate and apart from and without the county of which it was formerly a part.

(4) On final determination of boundaries, no changes in the boundaries originally proposed may be made except as prayed for in the petition or petitions or to correct clerical errors or uncertainties.

History: **En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(5); amd. Sec. 4, Ch. 250, L. 1979; amd. Sec. 266, Ch. 571, L. 1979.**

7-2-2213. Resolution of board of county commissioners. The board of county commissioners, on the final hearing of such petition or petitions, shall, by a resolution entered on its minutes, determine:

(1) the boundaries of the proposed new county, and the boundaries so determined by the board shall be the boundaries of the proposed new county if it is created as herein provided;

(2) whether the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county as herein required or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, whether each petition is signed by at least 50% of the registered electors of that portion of each of the existing counties which is proposed to be taken into the proposed new county;

(3) whether any line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided;

(4) whether the proposed new county will contain property, according to the last preceding assessment, which will equal in amount at least $4 million, inclusive of all assessed valuation;

(5) whether the area of any existing county from which territory is taken to form the new county will be reduced to less than 1,200 square miles of surveyed land by taking the territory proposed to be taken therefrom to form the new county;

(6) whether the area of the proposed new county will contain at least 1,000 square miles of surveyed land to form the new county;

(7) the class to which the proposed new county will belong after its creation and the name of the proposed new county as stated in the petition;

(8) whether the area embraced within the proposed new county will be reasonably compact.

History: **En. Sec. 2, Ch. 226, L. 1919; re-en. Sec. 4393, R.C.M. 1921; re-en. Sec. 4393, R.C.M. 1935; amd. Sec. 7, Ch. 406, L. 1973; R.C.M. 1947, 16-504(4); amd. Sec. 267, Ch. 571, L. 1979.**

7-2-2214. Division of territory of proposed county into various districts. The board of county commissioners shall divide the proposed new county into a convenient number of township, road, and school districts; define their boundaries; and designate the names of such districts if the board determines that:

(1) the formation of the proposed new county will not reduce any county from which any territory is taken to an assessed valuation of less than $12 million, inclusive of the assessed valuation, or the area thereof to less than 1,200 square miles of surveyed land;

(2) the proposed new county contains property of an assessed valuation of at least $10 million, inclusive of all assessed valuation, and the proposed new county has an area of at least 1,000 square miles of land;

(3) no line of the proposed new county passes within 15 miles of the courthouse situated at the county seat of any county proposed to be divided, except as otherwise provided; and

(4) the petition contains the genuine signatures of at least 50% of the registered electors of the proposed new county or, in cases where separate petitions are presented from portions of two or more existing counties as herein required, each of the petitions contains the genuine signatures of at least 50% of the registered electors of that portion of the proposed new county from which it is taken.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(1); amd. Sec. 268, Ch. 571, L. 1979.

7-2-2215. Election on question of creating new county — proclamation and notice. (1) Within 2 weeks after its determination of the truth of the allegations of the petition, the board of county commissioners shall order and give proclamation and notice of an election to be held on a specified day, not less than 90 days or more than 120 days thereafter, in the territory which is proposed to be taken for the new county, for the purpose of determining whether such territory shall be established and organized into a new county and for the election of officers and location of a county seat therefor in case the vote at the election is in favor of the establishment and organization of the new county.

(2) All registered electors residing within the proposed new county who are registered electors of the county or counties from which territory is taken to form the proposed new county and who are to be registered under the provisions of the registration laws of the state shall be entitled to vote at the election. Registration and transfers of registration shall be made and shall close in the manner and at a time provided by law for registration and transfers of registration for a general election in Montana.

(3) The proclamation and notice of election shall be published as provided in 13-1-108, and a copy thereof shall be mailed immediately by the election administrator of the county in which the petition is filed to the election administrator of each county from which territory is to be taken for the proposed new county.

(4) The proclamation calling the election and the notice thereof provided for in this part shall be made and given exclusively by the board with which the petition for the formation and establishment of the new county is filed.

History: En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 269, Ch. 571, L. 1979.

7-2-2216. Establishment of election precincts. Said board of county commissioners shall also, if necessary for the purpose of the election provided for in 7-2-2215, change the boundaries of the election precincts in said old county or counties to make the same conform to the boundaries of the proposed new county, provided that the boundary lines of no such precinct shall extend beyond the boundary lines of the then-existing county in which it is located and from which the territory is proposed to be taken.

History: **En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part).**

7-2-2217. Appointment of election officials. The board of county commissioners shall appoint election judges to act at the election provided for in 7-2-2215 and to be paid by the board.

History: **En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 270, Ch. 571, L. 1979.**

7-2-2218. Form of ballot. (1) The proclamation and notice required by 7-2-2215 shall require the electors to cast ballots which shall contain the words "For the new county of .... (giving the name of the proposed new county) — Yes" and "For the new county of .... (giving the name of the proposed new county) — No", and each elector desiring to vote for the establishment and organization of the new county shall mark a cross (X) opposite the words "For the new county of .... — Yes" in the manner now required by law in other elections, and each elector desiring to vote against the establishment and organization of the new county shall mark a cross (X) opposite the words "For the new county of .... — No" in the manner now required by law in other elections.

(2) The ballots shall also contain the names of individuals to be voted for to fill the various elective offices designated in the proclamation for counties of the class to which the proposed county will belong, as determined by the board of county commissioners, as herein otherwise provided.

(3) There shall also be printed upon the ballot the words "For the county seat" and the names of all cities or towns which may have filed with the election administrator a petition, signed by at least 25 registered electors, nominating any city or town within the proposed new county for the county seat. The elector shall designate his choice for county seat by marking a cross (X) opposite the name of the city or town for which he desires to cast his ballot.

History: **En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 271, Ch. 571, L. 1979.**

7-2-2219. Conduct of election. (1) (a) The board issuing the proclamation and notice of election pursuant to 7-2-2215 shall cause the county election administrator to furnish to the election judges of each precinct in the proposed new county all election supplies and equipment necessary to conduct the election and which are not specifically directed to be furnished by the election administrator of another county or counties.

(b) The election administrator of each county from which territory is taken for the proposed new county shall, not less than 5 days before the date of the election, furnish for each precinct within the proposed new county a precinct register for the precincts of the proposed new county which are within their respective counties.

(2) The election provided for in 7-2-2215 shall be governed and controlled by the general election laws of the state, so far as the same are applicable and except as otherwise provided herein. The provisions of the election laws relating to preparation, printing, and distribution of sample ballots, except the provisions of these laws relating to primary elections in this state, apply to any election provided for in this part. All returns of an election shall be made to and canvassed by the board of county commissioners calling the election.

(3) All nominations of candidates for offices required to be filled at the election shall be made in the manner provided by law for the nomination of candidates by petition.

History: **En. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; R.C.M. 1947, 16-505(part); amd. Sec. 5, Ch. 250, L. 1979; amd. Sec. 272, Ch. 571, L. 1979.**

7-2-2220. Cost of election. The expense of said election shall be paid by the county calling such election, and any other county affected thereby shall pay its proportion thereof as provided in 7-2-2244.

History: **En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).**

7-2-2221. Determination of county seat — temporary county seat. (1) At the special election to be held as provided in 7-2-2215, the question of the election of the county seat is hereby provided to be submitted to the qualified electors of the proposed new county, and the majority of all the votes cast therefor shall determine the election thereon.

(2) (a) In case any city or town fails to receive a majority of all the votes cast, then the city or town receiving the highest number of all votes cast shall be designated as the temporary county seat. The temporary county seat selected upon the organization of such county shall remain as such county seat until the permanent county seat shall be established as provided by law.

(b) In case any city or town is not the choice of the election for the county seat by a majority of all the votes cast, the question of choice between the two cities or towns for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors at the next general election thereafter.

(c) When the county seat shall have been selected as herein provided, it shall not thereafter be changed except in the manner provided by law.

History: **Ap. p. Sec. 3, Ch. 226, L. 1919; re-en. Sec. 4394, R.C.M. 1921; re-en. Sec. 4394, R.C.M. 1935; amd. Sec. 8, Ch. 406, L. 1973; Sec. 16-505, R.C.M. 1947; Ap. p. Sec. 1, Ch. 16, Ex. L. 1919; re-en. Sec. 4392, R.C.M. 1921; re-en. Sec. 4392, R.C.M. 1935; Sec. 16-503, R.C.M. 1947; R.C.M. 1947, 16-503(part), 16-505(part).**

7-2-2222. Effect of election — resolution by county commissioners. (1) If, upon the canvass of the votes cast at the election, it appears that more than 50% of the votes cast on the issue are "For the new county of .... — Yes", the board of county commissioners shall, by a resolution entered upon its minutes, declare such territory duly formed and created as a county of this state, of the class to which the same belongs and under the name of .... County, and that the city or town receiving the highest number of votes cast at the election for county seat shall be the county seat of the county until removed in the manner provided by law and designate and declare the individuals receiving, respectively, the highest number of votes for the several offices to be filled at the election to be duly elected to the offices.

(2) However, if upon such canvass it appears that more than 50% of the votes cast on the issue at the election are "For the new county of .... — No", the board canvassing the vote as provided herein shall pass a resolution in accordance therewith, and thereupon the proceedings relating to division of such county or counties shall cease. No other proceedings in relation to any other division of the old county or counties shall be instituted for at least 2 years after such determination.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 273, Ch. 571, L. 1979.

7-2-2223. Procedure to complete creation of county. (1) The board of county commissioners shall immediately file a copy of its resolution, authorized by 7-2-2222(1) and duly certified, in the office of the secretary of state. Ninety days after the date of such filing:

(a) the new county is considered to be fully created;

(b) the organization thereof is considered completed; and

(c) the county officers, other than the county commissioners and the county clerk, are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law and giving bonds for the faithful performance of their duties, as required by the laws of the state.

(2) The election administrator of the county with which the petition was filed must immediately make out and deliver to each of the individuals declared and designated to be elected a certificate of election authenticated by his signature and the seal of the county. The individuals elected members of the board and the county clerk shall, immediately upon receiving their certificates of election, assume the duties of their respective offices.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 6, Ch. 250, L. 1979; amd. Sec. 274, Ch. 571, L. 1979.

7-2-2224. Offices and supplies for new county. The board of county commissioners of the new county may provide a suitable place for the county officers and purchase supplies necessary for the proper conduct of the county government.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part); amd. Sec. 7, Ch. 250, L. 1979.

7-2-2225. Officers of new county. (1) Except as provided in subsections (2) through (4) of this section, at the election provided for in 7-2-2215, there shall be chosen a board of county commissioners and such other county, township, and district officers as are provided by law for counties of the class to which the new county belongs.

(2) All elected, qualified, and acting officers of the county or counties who may reside within the proposed new county are considered to be officers of the new county if they file, within 5 days after the final hearing and determination of the petition for the proposed new county, with the board of county commissioners whose duty it shall be to call the election their intention to become officers of the proposed new county, and the board issuing

the proclamation of the election shall omit providing for the election of any such officers as have filed their declaration to continue in office.

(3) All elected, qualified, and acting justices of the peace residing within the proposed new county shall hold office as justices of the peace in the new county for the remainder of the term for which they were elected.

(4) All elected, qualified, and acting school trustees residing within the proposed new county at the time of the division of such county into school districts, as provided in 7-2-2214, shall hold office as school trustees in the new county for the remainder of the term for which they were elected on qualifying as school trustees for the respective districts in which they reside, as these districts are organized as provided by this part.

(5) The officers elected or appointed under the provisions of this part shall each perform the duties and receive the compensation now provided by general law for the office to which they have been appointed or elected in the counties of the class to which the new county belongs.

History: (1)En. Sec. 2, Ch. 106, L. 1925; re-en. Sec. 4396.2, R.C.M. 1935; Sec. 16-509, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; Sec. 16-507, R.C.M. 1947; R.C.M. 1947, 16-507(part), 16-509; amd. Sec. 8, Ch. 250, L. 1979.

7-2-2226. Term of office for initial officers of new county. All the officers elected at said election or appointed under this part shall hold their offices until the time provided by general law for the election and qualification of such officers in this state and until their successors are elected and qualified. For the purpose of determining the term of office of such officers, the years said officers are to hold office are to be computed from and including the first Monday after January 1 following the preceding general election.

History: En. Sec. 4, Ch. 226, L. 1919; re-en. Sec. 4395, R.C.M. 1921; re-en. Sec. 4395, R.C.M. 1935; amd. Sec. 9, Ch. 406, L. 1973; R.C.M. 1947, 16-506(part).

7-2-2227. Qualification, oath of office, and bond. (1) Each person elected or appointed to fill an office of such new county under the provisions of this part shall qualify in the manner provided by law for such officer, except as otherwise provided, and shall enter upon the discharge of the duties of his office within such time as herein provided after the receipt of the certificate of his election.

(2) Each of such officers may take the oath of office before any officer authorized by the laws of Montana to administer oaths.

(3) The bond of any officer from which a bond is required shall be approved by any judge of the district court of the district to which such new county is attached for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).

7-2-2228. Judicial district for new county. Said new county, when created and organized in pursuance of the provisions of this part, shall be attached to such judicial district as may be designated by the governor of Montana, in a proclamation to be issued by him designating such new county as attached to the particular judicial district for judicial purposes.

History: En. Sec. 5, Ch. 226, L. 1919; re-en. Sec. 4396, R.C.M. 1921; re-en. Sec. 4396, R.C.M. 1935; amd. Sec. 1, Ch. 253, L. 1975; R.C.M. 1947, 16-507(part).

7-2-2229 through 7-2-2240 reserved.

7-2-2241. Commission to determine and adjust indebtedness and assessments for old and new counties. (1) It shall be the duty of the persons elected to or continuing to hold the office of county commissioner of said new county to meet at the county seat thereof within 5 days after all of them shall have qualified, and upon organization of said board of county commissioners, it shall notify the governor of the state of the organization of said county. Thereupon, it shall be the duty of the governor to appoint three persons, one of whom shall be a resident and a taxpayer within the new county and no two of whom shall be from any one county, to form and be a board of commissioners.

(2) The proceedings required in 7-2-2244 through 7-2-2246 to be taken in the ascertainment and adjustment of property rights and debts shall be had and taken as between said new county and each of the counties from which territory is taken to form said new county in the manner and at the ratio provided in 7-2-2244 through 7-2-2246.

History: (1)En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; Sec. 16-510, R.C.M. 1947; (2)En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; Sec. 16-511, R.C.M. 1947; R.C.M. 1947, 16-510(part), 16-511(part).

7-2-2242. Conduct of business by commission. (1) The commissioners provided for in 7-2-2241 shall, within 10 days after the notice of the appointment, meet at the county seat of the new county and organize by electing from their number a chairman and also by electing a secretary, who must not be a member of said commission. Thereafter, such commission may meet at such place or places as it may select. A majority of such commissioners shall constitute a quorum for the transaction of business.

(2) (a) Said commission shall have power to compel by citation or subpoena, signed by their president and secretary, the attendance of such persons and the production of such books and papers before said commission as may be required in the performance of the duties imposed by this part, except that the official records of any county or counties from which said new county was formed shall in no case be taken away from the county seat of said county.

(b) It shall be the duty of the sheriff of any county to execute in his county all lawful orders and citations of the said commission, and for any services so performed, the sheriff shall be allowed the same fees as are allowed to him for services in civil actions.

(c) All witnesses attending before said commission shall be entitled to the same compensation and mileage as is allowed to witnesses in courts of record. No witness shall be excused from attendance at the time and place mentioned in said order or citation by reason of the failure of the officer making such service to tender to such witness his fees and mileage in advance.

History: En. Sec. 6, Ch. 226, L. 1919; re-en. Sec. 4397, R.C.M. 1921; re-en. Sec. 4397, R.C.M. 1935; R.C.M. 1947, 16-510(part).

7-2-2243. Compensation of commission members. Members of the board of commissioners provided for under 7-2-2241 shall receive a compensation of not to exceed $8 per day for every day they are actually employed under the provisions of this part. All of which expenses, together with the reasonable expenses of stationery, postage, and incidental expenses, shall be borne in equal proportions by the counties affected by such division, including said new county. The amounts payable by each county shall be paid by the treasurers of the respective counties after the same shall have been presented to and allowed by the board of county commissioners as is provided by law for claims against any county.

History: **En. Sec. 8, Ch. 226, L. 1919; re-en. Sec. 4399, R.C.M. 1921; re-en. Sec. 4399, R.C.M. 1935; R.C.M. 1947, 16-512.**

7-2-2244. Role of commission. (1) (a) Said board of commissioners shall, immediately after its organization:

(i) ascertain the costs of the election held hereunder and apportion the same pro rata among each of the counties from which territory was taken to form such new county;

(ii) ascertain the indebtedness of each county from which territory was taken to form the new county as the same existed at the time when the result of the election was declared by the board of county commissioners as hereinbefore provided;

(iii) ascertain the total value of all property at the time belonging to each of said counties from which territory was taken and situated within the limits of said old counties, respectively; and

(iv) ascertain the assessed value of all property in each of the original old counties from which territory was so taken, according to the last-completed assessment made for said county, and also the assessed value, under the same assessment, of all property within the territory of the new county which shall have been taken from the old county or counties from which said new county was formed.

(b) In the determination of the value of county property, all buildings and their furniture, real estate, road tools, machinery, and all steel bridges which may have been constructed and in use for a period less than 10 years shall be taken into consideration by the commissioners.

(2) They shall then find the difference between the amount of the indebtedness of the old county and the value of the property belonging to the old county at the date of the declaration of the result of said election, as hereinbefore provided, and if such indebtedness exceeds the value of such property belonging to the old county, the new county shall pay to the old county a due proportion thereof, to be determined as follows: as said assessed value of the property in the old county is to the assessed value of the property in the territory to be incorporated by this part within the new county from said old county, so is the amount of said excess to the amount to be paid by said new county to said old county.

History: **En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).**

7-2-2245. Commission to certify information to county commissioners. Said board of commissioners shall certify forthwith to the board of county commissioners of the new county and the old counties thereby affected the amount constituting the due proportion of said excess payable by such new county to each of them and also the value of any property belonging to each old county at the time when said division took effect, as hereinbefore provided, which is situated in the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2246. Settlement between counties following adjustment of indebtedness. (1) The sum of said ascertained value of the property referred to in 7-2-2245 added to the ascertained proportion of the excess referred to in 7-2-2245 which the new county is to pay the old county and its proportion of the expense of said election, as aforesaid, shall be an indebtedness from the new county to the old county, and the property situated, as aforesaid, in the new county shall upon settlement therefor as provided in this part, become the property of the new county, and the old county shall pay the entire indebtedness against it.

(2) If, upon the settlement between the old and the new counties, as herein provided for, the new county shall be found to be indebted to the old county or either of the old counties, the money necessary to pay said indebtedness shall be raised by a tax levied upon the property contained in said new county and said new county shall pay the same. Such payment by said new county may be made in not more than three equal annual payments or by funds to be derived from the sale of bonds of said new county, as may be determined by a resolution of the board of county commissioners of said new county adopted within 1 year after the receipt of the statement from the board of commissioners, as aforesaid, of the amount or amounts due from it.

(3) If the value of the property belonging to the old county exceeds the indebtedness of the old county, then the old county shall pay to the new county a due proportion of such excess, which proportion shall be determined by the board of commissioners and shall be paid by the old county to the new county in the same manner and subject to the same conditions herein provided for payment by the new county to the old county when the indebtedness of the old county exceeds the value of the property in the old county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2247 through 7-2-2250 reserved.

7-2-2251. Collection of delinquent taxes. Delinquent taxes due the old county against property situated in the new county shall be transcribed in and collected by the new county.

History: En. Sec. 7, Ch. 226, L. 1919; re-en. Sec. 4398, R.C.M. 1921; re-en. Sec. 4398, R.C.M. 1935; R.C.M. 1947, 16-511(part).

7-2-2252. Assessment and collection of taxes for new county. (1) After the creation of a new county, its officers shall complete all proceedings necessary for the assessment or collection of the state and county taxes for the then-current year.

(2) (a) All acts and steps taken by the officers of the old county or counties prior to the creation of the new county are considered as having been performed by the officers of the new county for the benefit of the new county. Upon the creation of the new county, it shall be the duty of the officers of the old county or counties to immediately execute and deliver to the

board of county commissioners of the new county copies of all assessments or other proceedings relative to the assessment and collection of the current state and county taxes on property in the new county. Such copies shall be filed with the respective officers of the new county who would have the custody of the same if the proceedings had been originally had in the new county. Such certified copies are considered as originals in the new county, and all proceedings therein recited are considered as original proceedings in the new county and shall have the same effect as if the proceedings therein stated had been had at the proper time and in the proper manner by the respective officials of the new county.

(b) The officials of the new county shall proceed with the assessment and collection of the taxes as if the proceedings originally had in the old county or counties had been originally had in the new county.

History: **En. Sec. 9, Ch. 226, L. 1919; re-en. Sec. 4400, R.C.M. 1921; re-en. Sec. 4400, R.C.M. 1935; R.C.M. 1947, 16-513; amd. Sec. 9, Ch. 250, L. 1979.**

7-2-2253. Procedure to transfer money to school and road funds. (1) The county superintendent of schools of an old county shall furnish the county superintendent of schools of the new county with a certification of the average number belonging (ANB) in the different school districts in the territory set apart to form the new county and shall certify to the board of county commissioners of the old county the amount due. The board of the old county shall order a warrant drawn on the treasury of the old county for all the money that is or may be due by apportionment or otherwise to the different school districts embraced in the new county and taken from the old county.

(2) The county treasurer shall certify to the county commissioners of an old county the amount due in the different road funds. The county commissioners shall order a warrant drawn on the treasury of the old county in favor of the new county for all money that is or may be due by apportionment or otherwise to the different road and district funds in the territory set apart to form the new county and taken from the old county, which amounts shall be properly credited in both counties.

(3) Whenever in the formation of a new county a road or school district has been divided, the board of county commissioners shall by resolution direct the treasurer to transfer the proper proportionate amount of the money remaining in the fund of such district to the treasurer of the new county.

History: **En. Sec. 10, Ch. 226, L. 1919; re-en. Sec. 4401, R.C.M. 1921; re-en. Sec. 4401, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1973; R.C.M. 1947, 16-514; amd. Sec. 10, Ch. 250, L. 1979.**

7-2-2254. Transfer and transcription of records. (1) The board of county commissioners of any new county must provide suitable books and have transcribed from the records of the old county or counties all such parts thereof as relate to or affect property situated in the new county or the title thereof.

(2) All chattel mortgages, renewals of chattel mortgages, articles of incorporation, contract notes, sheriff certificates of sale, liens, and original affidavits of registration which may affect or relate to property or persons situated within the new county shall be delivered by the county clerk of the

old county to the county clerk of the new county and shall be preserved by the county clerk of the new county as permanent files of the new county.

History: En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; R.C.M. 1947, 16-515(part); amd. Sec. 11, Ch. 250, L. 1979.

7-2-2255. Transfer of court files and actions. (1) The files of all actions in the office of the clerk of the district court of the old county, whether reduced to judgment or pending, for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall be delivered by the clerk of the district court of the old county to the clerk of the district court of the new county to be kept and preserved by him as permanent files of such new county, to the end that only the minutes and other entries in books kept by the clerk of the district court need be transcribed.

(2) All actions pending in the district court of the old county or counties for the recovery of the possession of quieting title to or the enforcement of liens upon real estate lying wholly in the new county or any other actions affecting real estate lying wholly in the new county shall, forthwith upon the delivery of the files in said action to the clerk of the district court of the new county as provided in subsection (1), be transferred to the district court in which the new county may be attached for judicial purposes and thereafter shall be subject to the same laws as if said action had been originally brought in the district court of the new county.

History: (1)En. Sec. 11, Ch. 226, L. 1919; re-en. Sec. 4402, R.C.M. 1921; amd. Sec. 1, Ch. 75, L. 1925; re-en. Sec. 4402, R.C.M. 1935; Sec. 16-515, R.C.M. 1947; (2)En. Sec. 12, Ch. 226, L. 1919; re-en. Sec. 4403, R.C.M. 1921; amd. Sec. 2, Ch. 75, L. 1925; re-en. Sec. 4403, R.C.M. 1935; Sec. 16-516, R.C.M. 1947; R.C.M. 1947, 16-515(part), 16-516.

7-2-2256. Publication by posting of notice. Whenever in this part publication of any notice is provided for and no newspaper of general circulation is published within the territory in which said notice is required to be published, notice shall be given by posting copies of such notice in at least 10 public places in such territory for the same length of time said notice was required to be published.

History: En. Sec. 13, Ch. 226, L. 1919; re-en. Sec. 4404, R.C.M. 1921; re-en. Sec. 4404, R.C.M. 1935; R.C.M. 1947, 16-517.

Part 23

Organization of New Counties Created by Legislation

7-2-2301. Meeting and organization of board of county commissioners upon creation of new county by legislature. Whenever a county is created in this state by legislative enactment, it shall be the duty of the persons appointed to the office of county commissioner of such county by the act creating it to meet at some place in the county, to be agreed upon by a majority of said county commissioners, within 15 days after the passage of the act creating the county and then and there to organize as a board of county commissioners by electing one of their number chairman.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part).

7-2-2302. Role of county clerk of county created by legislature. (1) The individual appointed to the office of county clerk in the bill creating the county shall be notified in writing, by the county commissioners or some one of them, of the time and place of the meeting required by 7-2-2301. He must attend the meeting and act as the clerk thereof and keep a record of the proceedings.

(2) If no individual is appointed to the office of county clerk by the act creating the county, the commissioners shall at the meeting select some individual qualified to hold the office of county clerk to act as clerk of the meeting.

(3) The individual appointed county clerk shall also serve as election administrator.

History: En. Sec. 1, Ch. 135, L. 1911; re-en. Sec. 4378, R.C.M. 1921; re-en. Sec. 4378, R.C.M. 1935; R.C.M. 1947, 16-401(part); amd. Sec. 275, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-2303. Applicability of general laws to new counties and officers. All laws of general nature applicable to the several counties of Montana and to the officers thereof and to their powers and duties shall be applicable to a new county and the officers thereof from and after the creation of the county, except as otherwise provided in this part or the act creating the county.

History: En. Sec. 11, Ch. 135, L. 1911; re-en. Sec. 4388, R.C.M. 1921; re-en. Sec. 4388, R.C.M. 1935; R.C.M. 1947, 16-411.

7-2-2304 through 7-2-2310 reserved.

7-2-2311. Designation of temporary county seat. (1) Immediately after the organization of the board of county commissioners, as provided in 7-2-2301, said board shall, by a resolution spread upon the minutes of its proceedings, designate some place within said county as and to be the temporary county seat until the permanent county seat shall be located as provided in this part.

(2) In the event of a majority of the county commissioners failing to agree upon the location of the temporary county seat, each county commissioner shall write the name of the place he favors as the temporary county seat on a slip of paper. Said slips shall be enclosed in envelopes of the same size, color, and texture and shall be deposited in a box or other suitable receptacle; and the county clerk, in the presence of said commissioners, shall draw out one of the slips. Thereupon, the county commissioners shall, by resolution spread upon the minutes, declare the place named on the slip so drawn by the county clerk to be the temporary county seat of said county.

(3) The place so designated shall be the temporary county seat of said county until the permanent county seat is located by the electors of said county at the general election to be held on the first Tuesday after the first Monday of November of the next even-numbered year after the creation of the county or at a special election as hereinafter provided.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(1), (2).

7-2-2312. Election on question of locating permanent county seat. (1) Except as provided in subsection (2), at the first general election after the creation of the county, it shall be the duty of the board of county commissioners and election administrator to have separate official ballots printed and distributed for the use of the electors at said election. The ballots shall be in the form and contain the same matter as the ballots provided for in 7-2-2316, and the provisions of 7-2-2316(4) and 7-2-2318 shall apply to and govern the manner of voting and of canvassing said ballots. The board shall declare the result of such election and the location of the permanent county seat, and said county seat shall be located in the manner and according to the provisions of 7-2-2318.

(2) (a) At any time within 6 months after the passage of an act creating a new county, a petition or petitions may be filed with the election administrator of such county asking the board to submit the question of the location of the permanent county seat to the electors of the county at a special election to be called and held in the manner provided in this part.

(b) Said petition or petitions must contain in the aggregate the names of at least 100 qualified electors whose names also appear as registered electors in some registration district established and existing in the territory embraced in the new county at the last general election held therein. The petition or petitions, when filed with the board, must also have certificates attached thereto from the election administrator of the county in which the individual or individuals signing the petition resided before the creation of the new county, certifying that the names of the individuals signing said petition or petitions appear in the registration books of his county containing the names of the electors registered in the last general election in the districts now embraced in the new county.

History: En. Sec. 2, Ch. 135, L. 1911; re-en. Sec. 4379, R.C.M. 1921; re-en. Sec. 4379, R.C.M. 1935; amd. Sec. 3, Ch. 406, L. 1973; R.C.M. 1947, 16-402(3) thru (5); amd. Sec. 276, Ch. 571, L. 1979.

7-2-2313. Procedure to hold special election. (1) Upon filing the petition or petitions, duly certified as provided in 7-2-2312, with the election administrator of the new county, he must immediately notify the chairman of the board of county commissioners who, upon receipt of such notice, must call a meeting of the board, to be held within 10 days after the filing of the petition, for the purpose of considering the same. If the board at such meeting finds that said petition conforms to the requirements of and is in accordance with the provisions of 7-2-2312, it shall at the meeting, by a resolution entered in its minutes, call a special election of the registered electors of said county for the purpose of voting upon the question of the location of the permanent county seat.

(2) The election shall be held on Tuesday and not less than 40 or more than 60 days after the date of calling the same. The board must issue an election proclamation containing a statement of the time of the election and the question to be submitted. A copy of this proclamation must be published in some newspaper printed in the county, if any, and posted at each place of election at least 10 days before the election.

History: En. Sec. 3, Ch. 135, L. 1911; re-en. Sec. 4380, R.C.M. 1921; re-en. Sec. 4380, R.C.M. 1935; R.C.M. 1947, 16-403; amd. Sec. 277, Ch. 571, L. 1979.

7-2-2314. Establishment of precincts and polling places — appointment of deputy registrars. (1) At the meeting of the board at which the special election is called for the purpose of locating the permanent county seat, the board shall, by resolution entered in its minutes, divide the county into precincts and establish polling places in the manner provided by law.

(2) It must also, at the same session of the board, appoint deputy registrars for the several precincts established by it, who must possess the qualifications required by law for deputy registrars.

History: **En. Sec. 4, Ch. 135, L. 1911; re-en. Sec. 4381, R.C.M. 1921; re-en. Sec. 4381, R.C.M. 1935; R.C.M. 1947, 16-404; amd. Sec. 278, Ch. 571, L. 1979.**

7-2-2315. Appointment of election judges. (1) At the same meeting of the board of county commissioners at which the special election for the location of the permanent county seat is called, the board shall appoint three judges of election for each precinct in the county, who shall act as the judges at the election. The judges appointed for the special election must qualify as required by the general election law.

(2) It shall be the duty of the election administrator to have printed and distributed to the election judges the necessary ballots, the form of which shall be as provided in 7-2-2316 and 7-2-2319, and also supply the judges with the necessary supplies required to hold such election in the manner provided by law.

History: **Ap. p. Sec. 6, Ch. 135, L. 1911; re-en. Sec. 4383, R.C.M. 1921; re-en. Sec. 4383, R.C.M. 1947; Ap. p. Sec. 7, Ch. 135; L. 1911; re-en. Sec. 4384, R.C.M. 1921; re-en. Sec. 4384, R.C.M. 1935; R.C.M. 1947, 16-406, 16-407(part); amd. Sec. 279, Ch. 571, L. 1979.**

7-2-2316. Form of ballot. (1) The form of the ballot used at such elections shall be as follows: there shall be a stub across the top of each ballot and separated therefrom by a perforated line.

(2) Upon the face of the stub there shall be printed the following instructions:

"To vote this ballot the elector will write in the blank space on the ballot the name of the town or place at which he desires the permanent county seat to be located."

(3) The ballot below the perforated line shall be in the following form:

"For the permanent county seat of .... County (here insert name of county) my choice is ...."

(4) When the name of a town or place in a county shall be so inserted in the blank space on such ballot by an elector and the ballot has been cast as provided by law, the same shall be deemed a vote for the designated town or place as the location of the permanent county seat of said county.

History: **(1) thru (3)En. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; (4)En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; Sec. 16-409, R.C.M. 1947; R.C.M. 1947, 16-408(part), 16-409(part); amd. Sec. 379, Ch. 571, L. 1979.**

7-2-2317. Conduct of election. The polls must be opened and closed, the voting done, the ballots counted, returns made to the board of county commissioners, and all other matters connected with said election carried on and conducted in accordance with and as provided by the general election laws of this state. Any person who from any cause is unable to write may have one of the judges in the presence of another judge write his choice on the ballot.

History: Ap. p. Sec. 7, Ch. 135, L. 1911; re-en. Sec. 4384, R.C.M. 1921; re-en. Sec. 4384, R.C.M. 1935; Sec. 16-407, R.C.M. 1947; Ap. p. Sec. 8, Ch. 135, L. 1911; re-en. Sec. 4385, R.C.M. 1921; re-en. Sec. 4385, R.C.M. 1935; Sec. 16-408, R.C.M. 1947; R.C.M. 1947, 16-407(part), 16-408(part).

7-2-2318. Canvass of returns — declaration of results. (1) The board of county commissioners of said county shall canvass the returns of said election in the manner provided by law for the canvassing of election returns.

(2) Upon such canvassing of returns, the town or place found to have received a majority of all votes cast on such question shall be declared by the board the permanent county seat of the county. The order declaring the result of such election shall be entered of record in the minutes of the proceedings of the board by the county clerk.

(3) From the date of the declaration of the results of the election, the town or place selected shall be and remain, until lawfully changed in the manner provided by law, the permanent county seat of such county. Within 10 days after the declaration of the result of such election, all records and county offices of the county, if located elsewhere, must be moved to and remain at the place declared the permanent county seat.

History: En. Sec. 9, Ch. 135, L. 1911; re-en. Sec. 4386, R.C.M. 1921; re-en. Sec. 4386, R.C.M. 1935; R.C.M. 1947, 16-409(part).

7-2-2319. Procedure in case of failure to select permanent county seat. (1) If no town or place receives a majority of all votes cast on such question, then the town or place receiving the highest number of votes shall be declared by the board and immediately become the temporary county seat of the county, and at the next general election the two towns or places receiving the greatest number of votes at said first election shall be the candidates for the permanent county seat.

(2) (a) At said next general election, the county clerk shall have separate ballots in the form provided for in 7-2-2316 printed and distributed as provided by law, containing the names of said candidates for the permanent county seat.

(b) On the stub of such ballots shall be printed the following instructions: "To vote this ballot the elector will place an X in the square before the name of the town he intends to vote for."

(c) The form of such ballots below the perforated line shall be as follows:

☐ ....for the permanent county seat

☐ ....for the permanent county seat.

(3) Of said towns or places the one receiving a majority of all the votes cast on such question shall be declared the permanent county seat. The board of county commissioners must canvass the returns and declare the result and the county seat must be located in accordance with the provisions of this part.

History: En. Sec. 10, Ch. 135, L. 1911; re-en. Sec. 4387, R.C.M. 1921; re-en. Sec. 4387, R.C.M. 1935; R.C.M. 1947, 16-410.

Part 24

Transfer and Transcription of Records, Court Actions, and Jury Lists for New Counties

7-2-2401. Transfer of certain records. (1) Any new county shall be entitled to all records, maps, plats, and charts of any old county, any part of whose territory is included in such new county, which records, maps, plats, or charts relate to the classification of lands for taxation purposes and apply exclusively to territory included in such new county. Such records, maps, plats, and charts shall be delivered by the officer or board of such old county to the corresponding officer or board of such new county upon proper receipt therefor and shall be made and become a part of the records of such new county, to all intents and purposes the same as if such records, maps, plats, and charts had been originally prepared and made by such new county.

(2) If any portion of the cost of preparing such records, maps, plats, or charts remains unpaid, said new county shall pay its proportionate share of such cost as may be determined by the board of commissioners of the old county.

History: En. Sec. 1, Ch. 201, L. 1921; re-en. Sec. 4421, R.C.M. 1921; re-en. Sec. 4421, R.C.M. 1935; R.C.M. 1947, 16-614(part).

7-2-2402. Transcription of records. (1) Any county or counties of Montana that shall be formed from portions of another county shall be entitled to have the county records affecting or relating to any and all property situated in the segregated county transcribed from the books of the original county and made a part of the records of the segregated county.

(2) Except as provided in 7-2-2401, it shall be the duty of the county commissioners of any county formed from part of another county to have so much of the records of the original county as relates to the property situated within the segregated county transcribed, as hereinafter provided.

History: (1)En. Sec. 1, p. 217, L. 1893; re-en. Sec. 4166, Pol. C. 1895; re-en. Sec. 2860, Rev. C. 1907; re-en. Sec. 4408, R.C.M. 1921; re-en. Sec. 4408, R.C.M. 1935; Sec. 16-601, R.C.M. 1947; (2)En. Sec. 2, p. 217, L. 1893; re-en. Sec. 4167, Pol. C. 1895; re-en. Sec. 2861, Rev. C. 1907; re-en. Sec. 4409, R.C.M. 1921; re-en. Sec. 4409, R.C.M. 1935; Sec. 16-602, R.C.M. 1947; R.C.M. 1947, 16-601, 16-602.

7-2-2403. Authority to contract for transcription service. Said county commissioners shall have full power and authority to contract for transcribing the records relating to all property situated within the boundaries of the segregated county, and for that purpose the person or persons engaged in the work of transcribing such records shall have access to all records of the county or counties from which segregated.

History: En. Sec. 3, p. 217, L. 1893; re-en. Sec. 4168, Pol. C. 1895; re-en. Sec. 2862, Rev. C. 1907; re-en. Sec. 4410, R.C.M. 1921; re-en. Sec. 4410, R.C.M. 1935; R.C.M. 1947, 16-603.

7-2-2404. Payment for transcription of records. Payment for transcribing such records shall be made by the county contracting therefor and by a warrant or warrants payable out of the general fund of such county.

History: En. Sec. 4, p. 217, L. 1893; re-en. Sec. 4169, Pol. C. 1895; re-en. Sec. 2863, Rev. C. 1907; re-en. Sec. 4411, R.C.M. 1921; re-en. Sec. 4411, R.C.M. 1935; R.C.M. 1947, 16-604.

7-2-2405. Certification of accuracy of transcription. (1) When the transcript of such records provided for herein shall be completed and approved by the county commissioners of such county, they shall be delivered to the county clerk and recorder of the county from which such records were taken. It shall be the duty of such county clerk and recorder to compare the records so transcribed with the original records as the same appear on the record books of the said original county. The county clerk and recorder to whom the transcript shall be delivered for comparison shall certify under oath that the transcribed records are full, complete, and exact copies of the original records.

(2) The county clerk and recorder shall be entitled to $6 per day for his time actually spent in comparing the said records, to be paid out of the general fund of the county requiring such comparison and certificate.

History: En. Sec. 5, p. 218, L. 1893; re-en. Sec. 4170, Pol. C. 1895; re-en. Sec. 2864, Rev. C. 1907; re-en. Sec. 4412, R.C.M. 1921; re-en. Sec. 4412, R.C.M. 1935; R.C.M. 1947, 16-605.

7-2-2406. Filing of transcribed records. All records so transcribed, when certified to as being full, complete, and correct, shall be delivered to the county clerk and recorder of the segregated county, shall be filed in the office of the county clerk and recorder of such segregated county, and shall thereupon become and be a part of the records of such county.

History: En. Sec. 6, p. 218, L. 1893; re-en. Sec. 4171, Pol. C. 1895; re-en. Sec. 2865, Rev. C. 1907; re-en. Sec. 4413, R.C.M. 1921; re-en. Sec. 4413, R.C.M. 1935; R.C.M. 1947, 16-606.

7-2-2407. Legal effect of transcribed records. A certified copy of the records so transcribed and filed in the office of the county clerk and recorder of any segregated county may be introduced in evidence and shall have the same force and effect as certified copies of original records.

History: En. Sec. 7, p. 218, L. 1893; re-en. Sec. 4172, Pol. C. 1895; re-en. Sec. 2866, Rev. C. 1907; re-en. Sec. 4414, R.C.M. 1921; re-en. Sec. 4414, R.C.M. 1935; R.C.M. 1947, 16-607.

7-2-2408 through 7-2-2410 reserved.

7-2-2411. Transfer of court actions affecting real property. (1) In all counties created out of any other county wherever there has been an action or proceeding begun affecting any real property situated within such new county, whether such action has been prosecuted to judgment or not, upon a written motion being filed by any person or persons interested in such real property so affected by such action or proceeding requesting the transfer of the files and papers and records of such action or proceeding to the office of the clerk of the district court of the new county wherein such real property is situated, it shall be the duty of the judge of the district court in which said action or proceeding was originally begun to order that a transfer of all the files and papers of such action or proceeding be made to the office of the clerk of the district court of the new county in which such real property is situated. When such an order of transfer is made, it shall be the duty of the clerk of the district court wherein such action or proceeding was originally instituted to transmit all of the files and papers in such action or proceeding, together with a certified copy of all minutes of the court relating to such action or proceeding, to the clerk of such new county in which the real property, the subject matter of such action or proceeding, is situated.

(2) Said clerk of the district court of the new county in which said property is situated shall, upon the receipt of such files and papers and certified copies of the minutes of the court, file said papers in his office as transferred files from the original county and shall enter and transcribe upon his records any final judgment or decree or order contained in such files or papers or records so transferred.

(3) Upon the receipt and filing of the files and papers in any action or proceeding transferred to a new county in accordance with the provisions of this section, the district court of such new county in which such files and papers shall have been transferred shall have the same jurisdiction with reference to said real property for the enforcement of any decree, judgment, or order that may have been entered therein or for such other proceedings as may be necessary in such action or proceeding as the district court had in the county wherein such action or proceeding was originally begun.

History: (1), (2)En. Sec. 1, Ch. 20, L. 1907; re-en. Sec. 2867, Rev. C. 1907; re-en. Sec. 4415, R.C.M. 1921; re-en. Sec. 4415, R.C.M. 1935; Sec. 16-608 R.C.M. 1947; (3)En. Sec. 2, Ch. 20, L. 1907; Sec. 2868, Rev. C. 1907; re-en. Sec. 4416, R.C.M. 1921; re-en. Sec. 4416, R.C.M. 1935; Sec. 16-609, R.C.M. 1947; R.C.M. 1947, 16-608, 16-609.

7-2-2412. Fees for transfer of court records. (1) The clerk of the district court wherein such action or proceeding was originally begun shall be entitled to receive, for transferring such files and papers and certified copies of the minutes and records entered in connection with such action or proceeding, no other fee than the rate of 20 cents per folio for copies of minutes made by him and 50 cents for certificate fee.

(2) The clerk of the district court of the new county to which such files and papers may be transferred in accordance with the provisions of 7-2-2411 shall not be entitled to any fees for the filing of such transferred records, but for the filing of any papers that may be filed thereafter in connection with such action or proceeding or for the issuance of any writs or other papers, such clerk shall be entitled to charge the same fees as now provided by law.

History: En. Sec. 3, Ch. 20, L. 1907; Sec. 2869, Rev. C. 1907; re-en. Sec. 4417, R.C.M. 1921; re-en. Sec. 4417, R.C.M. 1935; R.C.M. 1947, 16-610.

7-2-2413 through 7-2-2420 reserved.

7-2-2421. Preparation of jury list for new county. Whenever a new county has been created out of territory formerly embraced in any existing county or counties of the state, the jury list for such new county for the current year and until the regular jury commission for such new county shall certify the new jury list for the succeeding year, in accordance with the provisions of Title 3, chapter 15, part 4 shall be as follows.

History: En. Sec. 1, Ch. 129, L. 1919; re-en. Sec. 4422, R.C.M. 1921; re-en. Sec. 4422, R.C.M. 1935; R.C.M. 1947, 16-622.

7-2-2422. Certification of list of names. (1) The clerk of court of the county from which said new county may be segregated or, in the event of such new county being segregated from two or more counties, the clerks of court of each of such counties shall take the names of such persons as appear upon the jury list for such year, which may have been certified to him or to them by the jury commission or commissions of his or their respective county or counties to be residents of the territory embraced in such new county, and shall certify the same to the clerk of court of the new county.

(2) Such names shall then constitute the jury list for such new county for the period as aforesaid.

(3) Such new list shall be made and certified by such clerk or clerks of the existing county or counties as soon after the creation of such new county as may be practicable and in any event within 5 days after request therefor shall be made by the clerk of the district court of the new county.

History: **(1), (2)En. Sec. 2, Ch. 129, L. 1919; re-en. Sec. 4423, R.C.M. 1921; re-en. Sec. 4423, R.C.M. 1935; Sec. 16-623, R.C.M. 1947; (3)En. Sec. 3, Ch. 129, L. 1919; re-en. Sec. 4424, R.C.M. 1921; re-en. Sec. 4424, R.C.M. 1935; Sec. 16-624, R.C.M. 1947; R.C.M. 1947, 16-623, 16-624.**

7-2-2423. Correction of jury lists for old counties. The clerk or clerks of the district court of the county or counties from which such new county has been created shall, after the creation of such new county, remove from the list of jurors and jury boxes of his or their county or counties the names of all persons upon the list which may have been filed with him or them by the jury commission who may appear to him or them to be residents of the new county and so certified by him as aforesaid.

History: **En. Sec. 4, Ch. 129, L. 1919; re-en. Sec. 4425, R.C.M. 1921; re-en. Sec. 4425, R.C.M. 1935; R.C.M. 1947, 16-625.**

7-2-2424. Role of clerk of court in new county. The clerk of court of the new county shall then file and prepare his jury list and boxes in accordance with the general law pertaining to the duties of clerks of court with relation to jury lists and boxes.

History: **En. Sec. 5, Ch. 129, L. 1919; re-en. Sec. 4426, R.C.M. 1921; re-en. Sec. 4426, R.C.M. 1935; R.C.M. 1947, 16-626.**

Part 25

Change of Name of County

7-2-2501. Authorization to change name of county. The name, designation, appellation, cognomen, or title of any county in this state may be changed to any other name, designation, appellation, cognomen, or title as provided in this part.

History: **En. Sec. 1, Ch. 113, L. 1917; re-en. Sec. 4427, R.C.M. 1921; re-en. Sec. 4427, R.C.M. 1935; R.C.M. 1947, 16-701.**

7-2-2502. Petition to change county name. (1) Petitions for change of names must be heard and determined by the district court of the county whose name is sought to be changed.

(2) A petition for the change of the name, designation, appellation, cognomen, or title of any county in this state must be signed by a number of the legal voters who are taxpayers in such county equal, at least, to 25% of the whole number of votes cast for the office of governor of Montana in such county at the gubernatorial election next preceding the circulation of such petition. The signatures, in each instance, must be the genuine personal signature of the voter attaching his name to the petition. The petition must specify the present name of the county, the name proposed, and the reason

or reasons for such change of name and must be entitled in and addressed to the appropriate district court.

History: (1)En. Sec. 2, Ch. 113, L. 1917; re-en. Sec. 4428, R.C.M. 1921; re-en. Sec. 4428, R.C.M. 1935; Sec. 16-702, R.C.M. 1947; (2)En. Sec. 3, Ch. 113, L. 1917; re-en. Sec. 4429, R.C.M. 1921; re-en. Sec. 4429, R.C.M. 1935; Sec. 16-703, R.C.M. 1947; R.C.M. 1947, 16-702, 16-703.

7-2-2503. Form of petition. (1) The following shall be substantially the form of petition for any change of name of a county as provided in this part:

In the district court of the .... judicial district of the state of Montana, in and for the county of .....

Petition for the change of the
name of .... County

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

We, the undersigned legal voters of the county of ...., state of Montana, respectfully petition the honorable district court aforesaid that the name of .... County, Montana, be changed to the name of .... County, Montana.

The reasons for the proposed change of name as aforesaid are as follows (here set out reasons):

We further petition this honorable court to appoint a time for the hearing of this petition and of such objections thereto as may be filed before such date.

Each voter whose signature is hereby affixed hereby certifies that he has personally signed this petition and that the residence, post-office address, and voting precinct of such signer are correctly written after his signature appearing hereon.

Name	Residence	P. O. Address	Voting Precinct
......	....	....	....

Numbered lines for names.

(2) Every such sheet for petitioner's signature shall be attached to a full and correct copy of the petition, and such petition may be filed with the clerk of the district court aforesaid in sections for convenience in handling.

History: En. Sec. 4, Ch. 113, L. 1917; re-en. Sec. 4430, R.C.M. 1921; re-en. Sec. 4430, R.C.M. 1935; R.C.M. 1947, 16-704.

7-2-2504. Verification of petition signatures — county clerk's certification. (1) The county clerk of the county in which said petition shall be signed shall compare the signatures of the voters signing the same with their signatures on the registration books and blanks on file in his office for the preceding general election. The county clerk shall not retain in his possession any such petition or any part thereof for a longer period than 2 days for the first 200 signatures thereon and 1 additional day for each 200 additional signatures or fraction thereof on the sheets presented to him. At the expiration of such time, he shall file the same with the clerk of the aforesaid district court, with his certificate attached thereto as provided in subsection (2).

(2) After comparing the signatures, the county clerk shall attach to the sheets of said petition containing such signatures, his certificate to the aforesaid district court, substantially as follows:

State of Montana, County of ....

To the honorable district court of the .... judicial district of the state of Montana, in and for the county of .....

I, ..., county clerk of the county of ...., hereby certify that I have compared the signatures on (number of sheets) of the petition for change of name attached hereto with the signatures of said voters as they appear on the registration books and blanks in my office; and I believe that the signatures of (names of signers), numbering (number of genuine signatures), are genuine. I further certify that the number of genuine signatures hereto attached equals at least 25% of the whole number of votes cast for the office of governor of Montana in said county at the gubernatorial election next preceding the circulation of this petition.

...., County Clerk
(Seal) By ....
Deputy ....

(3) The forms herein given are not mandatory, and if substantially followed in any petition, it shall be sufficient, disregarding clerical and merely technical errors.

History: **En. Sec. 5, Ch. 113, L. 1917; re-en. Sec. 4431, R.C.M. 1921; re-en. Sec. 4431, R.C.M. 1935; R.C.M. 1947, 16-705.**

7-2-2505. Publication and posting of copies of petition. Upon the filing of the petition as aforesaid, the clerk of the district court, upon the receipt of the cost from any voter in the county, shall cause a copy of the same to be published for 4 successive weeks in some newspaper published in the county, and a copy of such petition must be posted at three of the most public places in the county for a like period by the clerk of the district court. Proofs must be made of such publication and posting before the petition can be considered and before a date for the hearing thereon may be fixed by the court.

History: **En. Sec. 6, Ch. 113, L. 1917; re-en. Sec. 4432, R.C.M. 1921; re-en. Sec. 4432, R.C.M. 1935; R.C.M. 1947, 16-706.**

7-2-2506. Court hearing on petition — court order. Such petition must be heard at such time as the court or judge may appoint, subject to the provisions of 7-2-2505. Objections may be filed in the office of the clerk of said court at any time before such date by any person who can, in such objections, show to the court or judge good reason against such change of name. On the hearing, the court or judge may examine on oath any of the petitioners, remonstrants, or other persons touching the petition and may make an order changing the name if there appears any reason, benefit, or advantage for such change or may dismiss the petition as to the court or judge may seem right or proper.

History: **En. Sec. 7, Ch. 113, L. 1917; re-en. Sec. 4433, R.C.M. 1921; re-en. Sec. 4433, R.C.M. 1935; R.C.M. 1947, 16-707.**

7-2-2507. Transmittal to secretary of state of order to change name. (1) Immediately upon the rendition of any decree changing the name of a county as provided in this part, the clerk of the district court of said county shall transmit, by registered or certified mail, a certified copy of said decree, showing the date of its rendition, to the secretary of state of Montana.

(2) The secretary of state shall file the same and record the same in an appropriate book.

History: En. Sec. 8, Ch. 113, L. 1917; re-en. Sec. 4434, R.C.M. 1921; re-en. Sec. 4434, R.C.M. 1935; R.C.M. 1947, 16-708.

7-2-2508. Procedure to effectuate name change in records and other papers. (1) From and after the rendition of the decree, the official records in the custody of the several county officers shall be styled and designated, as in each instance may be proper, with the new name of the county as provided by the decree. All printed blanks and forms, all printed matter whatsoever, and all written records of such county shall be styled and designated with the new name. All the official records, blanks, forms, books, and papers belonging to such county before the entry of such decree shall be styled and designated with the new name as provided in the decree.

(2) For the convenience of searchers of public records and in order to prevent confusion with respect to land titles or in any other respect, it shall be proper to style, designate, or refer to such records, books, papers, blanks, and forms as were in existence before the rendition of such decree in the following manner:

New Name (Formerly) Old Name of County

....

History: En. Sec. 9, Ch. 113, L. 1917; re-en. Sec. 4435, R.C.M. 1921; re-en. Sec. 4435, R.C.M. 1935; R.C.M. 1947, 16-709.

7-2-2509. Effect of name change on property and legal rights. (1) All public records and property of the county existing under the former name shall be and become the public records and property of the county of the new name. In all conveyances, indentures, instruments, decrees of courts, and other records where the former name of the county occurs, said former name shall thereafter be construed to mean the new name of the county.

(2) All writs and processes in force and existence under the former name of the county shall thereafter be the writs and processes of and appertaining to the county under its new name. All bonds, undertakings, and sureties, alive and in existence and running to or standing in the former name of the county, shall have the same force, effect, and relation to the county under its new name as they had to the county under its former name. All suits, actions, and proceedings in law or equity pending in the district court of the county under its former name or in any of the other courts of said county shall continue in full force and be in existence in the court in which they were pending under the new name of the county and shall not be in anywise abated or affected by the change of name.

History: En. Sec. 10, Ch. 113, L. 1917; re-en. Sec. 4436, R.C.M. 1921; re-en. Sec. 4436, R.C.M. 1935; R.C.M. 1947, 16-710.

7-2-2510. Effect of name change on vested rights and existing laws. (1) The change of name provided for in this part shall not impair or work a forfeiture or alteration of any vested rights.

(2) All laws of a general or special nature applicable to the county under its former name shall thereafter apply with equal force and effect to the county under its new name.

History: En. Sec. 11, Ch. 113, L. 1917; re-en. Sec. 4437, R.C.M. 1921; re-en. Sec. 4437, R.C.M. 1935; R.C.M. 1947, 16-711.

7-2-2511. Effect of name change on indebtedness, obligations, and contracts. (1) All indebtedness and obligations of the county, whether bonded or otherwise, shall be assumed by and become the indebtedness of the county under its new name. All bonds issued by the county under its former name, outstanding and unpaid at the time of the rendition of the decree, shall be assumed by and become due from and paid by the county under its new name.

(2) All contracts and obligations, express or implied, unfulfilled by the county at the date of the rendition of the decree shall be assumed and discharged by the county under its new name.

History: En. Sec. 12, Ch. 113, L. 1917; re-en. Sec. 4438, R.C.M. 1921; re-en. Sec. 4438, R.C.M. 1935; R.C.M. 1947, 16-712; amd. Sec. 12, Ch. 250, L. 1979.

7-2-2512. Effect of name change on district court. The terms of the district court in and for said county, as theretofore established by the court or a judge thereof under the former name of the county, shall become the terms of said court for the county under its new name and shall be held as stated, in and for said county under its former name.

History: En. Sec. 13, Ch. 113, L. 1917; re-en. Sec. 4439, R.C.M. 1921; re-en. Sec. 4439, R.C.M. 1935; R.C.M. 1947, 16-713.

7-2-2513. Effect of name change on officers. Persons who are, at the date of the rendition of the decree, the county, township, and district officers or officials and members of the legislature of the county under its former name shall remain in office and shall thereafter be the county, township, district, and legislative officials of the county under its new name and, as such, shall be entitled to the same salaries or compensation during the remainder of their terms of office that they were entitled to receive from the county under its former name.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

7-2-2514. Effect of name change on county boundaries. No change of name shall be so construed as to alter or modify the boundaries of the county as the same existed and were established under the former name of the county, but such boundaries shall be and remain the same until changed according to law.

History: En. Sec. 14, Ch. 113, L. 1917; re-en. Sec. 4440, R.C.M. 1921; re-en. Sec. 4440, R.C.M. 1935; R.C.M. 1947, 16-714(part).

Part 26

Removal of County Seat

7-2-2601. Petition to remove county seat. (1) Whenever the inhabitants of any county of this state desire to remove the county seat of a county from the place where it is fixed by law or otherwise to another place, they may present a petition to the board of county commissioners of their county, praying such removal, such place to be named in the petition, and that an election be held to determine whether or not such removal must be made.

(2) The petition to remove the county seat of the county from the place where it is fixed by law to another place must be presented at least 60 days prior to any action thereon being taken by the board of county commissioners. Action on said petition by the board must be had at a regular meeting of said board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2602. Filing of petition — notice and hearing. (1) A petition for removal of a county seat must be filed with the county clerk.

(2) The county clerk, immediately upon the filing of said petition, must cause to be printed in every newspaper published within said county a notice to the effect that a petition praying for the removal of said county seat has been filed with the county clerk, that said petition is open to the inspection of any and all persons interested therein, and that said petition will be presented to the board of county commissioners at its next regular session for action thereon.

(3) No other or additional petition than the one originally filed shall be considered by the board.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2603. Withdrawal of name from petition. At any time on or before the date fixed for the hearing, any person having signed the original petition for the removal of the county seat may file a statement in writing with the county clerk that he desires to have his name withdrawn from such petition, provided that not more than one withdrawal shall be permitted by the same person.

History: En. Sec. 4157, Pol. C. 1895; amd. Sec. 1, p. 145, L. 1901; re-en. Sec. 2851, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1915; amd. Sec. 1, Ch. 10, L. 1919; re-en. Sec. 4369, R.C.M. 1921; Cal. Pol. C. Sec. 3976; re-en. Sec. 4369, R.C.M. 1935; R.C.M. 1947, 16-301(part).

7-2-2604. Consideration of petition — submission to voters. (1) For the purpose of testing the sufficiency of any petition which may be presented to the county commissioners as provided in this section, the county commissioners shall compare such petition with the pollbooks in the county clerk's office constituting the returns of the last general election held in their county for the purpose of ascertaining whether such petition bears the names of at least 50% of the voters listed therein.

(2) If the petition is signed by at least 50% of the qualified electors of such county, the board of county commissioners must at the next general election submit the question of removal to the electors of the county.

(3) If such petition then shows that it has not been signed by at least 50% of the voters of the county, after deducting from the original petition the names of all persons who may have signed such original petition and who

may have filed or caused to be filed with the county clerk of said county or the board, on or before the date fixed for the hearing, their statement in writing of the withdrawal of their names from the original petition, it shall be deemed insufficient and the question of the removal of the county seat shall not be submitted.

History: En. Sec. 4158, Pol. C. 1895; amd. Sec. 2, p. 146, L. 1901; re-en. Sec. 2852, Rev. C. 1907; amd. Sec. 2, Ch. 10, L. 1919; re-en. Sec. 4370, R.C.M. 1921; Cal. Pol. C. Sec. 3977; re-en. Sec. 4370, R.C.M. 1935; amd. Sec. 1, Ch. 406, L. 1973; R.C.M. 1947, 16-302.

7-2-2605. Notice and conduct of election. (1) Notice of such election, clearly stating the object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law.

(2) In voting on the question, each elector must vote for the place in the county which he prefers by placing the mark X opposite the name of the place.

History: (1)En. Sec. 4159, Pol. C. 1895; re-en. Sec. 2853, Rev. C. 1907; re-en. Sec. 4371, R.C.M. 1921; Cal. Pol. C. Sec. 3979; re-en. Sec. 4371, R.C.M. 1935; Sec. 16-303, R.C.M. 1947; (2)En. Sec. 4160, Pol. C. 1895; re-en. Sec. 2854, Rev. C. 1907; re-en. Sec. 4372, R.C.M. 1921; Cal. Pol. C. Sec. 3980; re-en. Sec. 4372, R.C.M. 1935; Sec. 16-304, R.C.M. 1947; R.C.M. 1947, 16-303, 16-304.

7-2-2606. Determination and publication of election results. (1) When the returns have been received and compared and the results ascertained by the board, if a majority of the qualified electors voting on the question have voted in favor of any particular place, the board must give notice of the results by posting notices thereof in all the election precincts of the county and by publishing a like notice in a newspaper printed in the county at least once a week for 4 weeks.

(2) In the notice provided for in this section, the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than 90 days after the election. After the day named in the notice, the place chosen is the county seat of the county.

History: (1)En. Sec. 3, p. 146, L. 1901; re-en. Sec. 2855, Rev. C. 1907; amd. Sec. 1, Ch. 27, L. 1921; re-en. Sec. 4373, R.C.M. 1921; Cal. Pol. C. Sec. 3981; re-en. Sec. 4373, R.C.M. 1935; amd. Sec. 2, Ch. 406, L. 1973; Sec. 16-305, R.C.M. 1947; (2)En. Sec. 4162, Pol. C. 1895; re-en. Sec. 2856, Rev. C. 1907; re-en. Sec. 4374, R.C.M. 1921; Cal. Pol. C. Sec. 3982, re-en. Sec. 4374, R.C.M. 1935; Sec. 16-306, R.C.M. 1947; R.C.M. 1947, 16-305, 16-306.

7-2-2607. Transmittal of election results. Whenever any election has been held as provided for in this part, the statement made by the board of county commissioners showing the result thereof must be deposited in the office of the county clerk. Whenever the board gives the notice prescribed by 7-2-2606(2), they must transmit a certified copy thereof to the secretary of state.

History: En. Sec. 4163, Pol. C. 1895; re-en. Sec. 2857, Rev. C. 1907; re-en. Sec. 4375, R.C.M. 1921; Cal. Pol. C. Sec. 3983; re-en. Sec. 4375, R.C.M. 1935; R.C.M. 1947, 16-307.

7-2-2608. Frequency of elections on question of moving county seat. (1) When an election has been held and a majority of the votes are not cast for some place other than that fixed by law as the existing county seat, no second election for the removal thereof may be held within 4 years thereafter.

(2) When the county seat of a county has been once removed by a popular vote of the people of the county, it may be again removed from time to time in the manner provided by this part.

History: (1)En. Sec. 4164, Pol. C. 1895; re-en. Sec. 2858, Rev. C. 1907; re-en. Sec. 4376, R.C.M. 1921; Cal. Pol. C. Sec. 3984; re-en. Sec. 4376, R.C.M. 1935; Sec. 16-308, R.C.M. 1947; (2)En. Sec. 4, Ch. 146, L. 1901; re-en. Sec. 2859, Rev. C. 1907; re-en. Sec. 4377, R.C.M. 1921; Cal. Pol. C. Sec. 3985; re-en. Sec. 4377, R.C.M. 1935; Sec. 16-309, R.C.M. 1947; R.C.M. 1947, 16-308, 16-309; amd. Sec. 13, Ch. 250, L. 1979.

Part 27

Abandonment and Consolidation of Counties

7-2-2701. Abandonment and consolidation of counties. The organization and corporate existence of any county organized under the laws of this state may be abandoned and abolished and the territory within its boundaries may be attached to and made a part of some adjoining county in the manner provided by this part.

History: En. Sec. 1, Ch. 105, L. 1937; R.C.M. 1947, 16-4001.

7-2-2702. Petition for abandonment of county. (1) A petition may be filed with the county clerk of a county asking that the question of abandoning and abolishing the organization and corporate existence of the county and attaching its territory to and making the same a part of some adjoining county be submitted to the qualified electors of the county at an election. The petition shall state the name of the adjoining county to which the territory of the county to be abandoned and abolished shall be attached and made a part.

(2) The petition shall be signed by not less than 35% of the qualified electors of the county whose names appear upon the registration records of such county, shall contain the post-office address and voting precinct of each individual signing it, and shall state the name and address of three individuals to whom notice of the insufficiency of the petition shall be sent in the event that the petition does not have the required number of signatures of registered electors signed thereto. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

History: En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 280, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-2703. Processing of petition — certification to county commissioners. (1) It shall be the duty of the election administrator, within 30 days after the filing of the petition, to examine it and to ascertain and determine from the registration records of the county whether the petition is signed by the required number of registered electors. The election administrator may be authorized by the board of county commissioners to employ additional help in his office to assist him in the work of examining the petition, and the board shall provide for their compensation.

(2) When the examination is completed, the election administrator shall forthwith attach to the petition his certificate, properly dated and signed, showing the result of his examination. If the certificate shows that the petition is signed by the required number of registered electors, the election administrator shall immediately present the petition to the board if the board is then in session; otherwise, at its first regular meeting after the date of the certificate.

History: En. Sec. 2, Ch. 105, L. 1937; R.C.M. 1947, 16-4002(part); amd. Sec. 281, Ch. 571, L. 1979.

7-2-2704. Hearing on petition by county commissioners — notice. (1) Whenever any such petition is presented to the board of county commissioners of a county with a certificate of the election administrator attached thereto and showing that the petition has been signed by not less than 35% of the registered electors of the county whose names appear upon the registration records of the county, as provided in 7-2-2702 and 7-2-2703, the board shall, immediately upon presentation of the petition, make and enter an order in its minutes fixing a day for considering and taking final action on the petition. The date for final action shall be not less than 30 or more than 35 days after the date when the order is made.

(2) The board shall cause a notice to be published in the official newspaper of the county to the effect that the petition has been presented to the board asking for the abandonment and abolishment of the county and that the board will meet at the time specified in the order for considering and taking final action on the petition, at which time any registered electors of the county interested therein may appear and be heard thereon. The notice shall be published once a week for 2 successive weeks immediately following the making of the order.

History: En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(1); amd. Sec. 282, Ch. 571, L. 1979.

7-2-2705. Petition to amend proposed consolidation. (1) At any time prior to 5 days before the date fixed for consideration and final action on such petition, 50% of the registered electors residing within a particular part or portion of such county may file with the county clerk of such county a petition in writing, signed by them, praying that the part or portion of such county within which such petitioners reside shall not be attached to the county designated in the petition for abandonment but shall be attached to some other adjoining county. No person, after signing any such petition, shall be allowed or permitted to withdraw his signature or name therefrom.

(2) The petition authorized by subsection (1) shall definitely, particularly, and accurately describe the boundaries of such part or portion of said county which said petitioners desire to be attached to such other adjoining county and shall specify and name such other adjoining county to which such part or portion is to be attached if said county is abandoned and abolished.

(3) Separate and independent petitions may be filed by registered electors residing within the boundaries of separate and distinct and different parts or portions of such county, praying that, if said county is abandoned, the territory embraced within the boundaries described therein may be attached to

and become parts of the same or different adjoining counties other than the county named and designated in the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part).**

7-2-2706. Processing of petition to amend proposed consolidation — certification to county commissioners. Whenever any petition is filed under 7-2-2705, the election administrator shall immediately examine the same and determine from the registration records of the county whether the petition has been signed by the required number of registered electors and shall attach thereto his certificate showing the total number of registered electors residing within the boundaries described in the petition and the number thereof whose names appear on said petition and shall deliver the petition, with the certificate attached, to the board of county commissioners when the board meets to consider and take final action on the petition for abandonment.

History: **En. Sec. 3, Ch. 105, L. 1937; R.C.M. 1947, 16-4003(part); amd. Sec. 283, Ch. 571, L. 1979.**

7-2-2707. Action on petitions — resolution. (1) On the day fixed by the board for consideration and final action on such petition for abandonment, the board shall meet and examine and consider all petitions which may have been filed praying that particular parts or portions of said county, if abandoned, be attached to an adjoining county or counties other than the county named in such petition for abandonment and shall determine the sufficiency of each such petition filed and shall enter its findings with regard thereto in its minutes. Said board shall thereupon adopt a resolution, which shall be in writing and also entered in full in its minutes.

(2) Said resolution must be signed by the members of the board, and the county clerk must, within 5 days thereafter, make the certified copies of said resolution, with copy of petition or petitions attached, and transmit one copy to the governor of Montana and one copy to the county clerk of each county to which any part or portion of said county is to be attached if abandoned.

History: **En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part).**

7-2-2708. Form of resolution. The resolution authorized by 7-2-2707 shall be in substantially the following form:

Whereas, there has been filed with the election administrator of (name) county, Montana, a petition asking that the organization and corporate existence of the county be abandoned and abolished and its territory attached to and made a part of an adjoining county, the county of (name), Montana; and

Whereas, the petition has been presented to the board of county commissioners of (name) County, with a certificate of the election administrator of the county attached thereto showing that the petition has been signed by not less than 35% of the registered electors of the county; and

(If a petition for attaching any part or portion of the county, in case of abandonment, to an adjoining county or counties other than the county named in the petition for abandonment and found to have been signed by the required number of registered electors, insert the following for each petition):

Whereas, there has been filed a petition signed by not less than 50% of the registered electors residing within that part or portion of the county described as (give description as contained in petition), praying that the part or portion of the county within the boundaries be attached to and made a part of the county of (name of county given in petition) if the county is abandoned.

Now, therefore, be it resolved that if (name) County shall be abandoned and abolished, the territory embraced within its boundaries shall be attached to and become part of the following: (if all to be attached to one adjoining county so state, but if parts or portions to any other county or counties, then describe the part or portion to go to each adjoining county as well as to the county named in the petition for abandonment).

Be it further resolved that the county clerk of (name) County, Montana, make copies of this resolution, each with a copy of said petition for abandonment with the signatures omitted therefrom (and copies of petitions for attaching parts or portions of said county to adjoining county or counties other than the county named in the petition for abandonment, if any were filed and found sufficient, with signatures omitted), and certify to the same and affix the seal of the county thereto and transmit one of the copies to the governor of Montana and one of the copies to the clerk of each county to which any part of the county is to be attached if abandoned.

History: En. Sec. 4, Ch. 105, L. 1937; R.C.M. 1947, 16-4004(part); amd. Sec. 284, Ch. 571, L. 1979.

7-2-2709. Special election on question of abandonment and consolidation. (1) (a) Upon receipt of a certified copy of the resolution provided for in 7-2-2707, the governor shall, within 10 days thereafter, issue his proclamation calling a special election in the county in which the petition referred to in the resolution was filed and in each county designated in the resolution as a county to which any of the territory of the county, if abandoned and abolished, shall be attached and made a part.

(b) The proclamation shall fix a day for holding the election in such counties, which shall be not less than 90 days or more than 120 days after the date of the governor's proclamation calling the same, provided that if a general election will be held in the counties not less than 90 days or more than 120 days after the date of such proclamation, the governor, in the proclamation, shall direct that the question be submitted to the registered electors of the counties at the general election. The proclamation shall be filed in the office of the secretary of state, and copies thereof shall be transmitted by the governor to the election administrator of each of the counties in which the election is to be held.

(2) At the election there shall be submitted:

(a) to the registered electors of the county in which the petition was filed, the question of whether or not the county shall be abandoned and abolished and its territory attached to and made a part of the county designated and named for the purpose in the petition; and

(b) to the registered electors of each county named and designated in the resolution as a county to which a part of the territory of the county proposed to be abandoned and abolished shall be attached and made a part if the county shall be so abandoned and abolished, the question of whether or not the part of the territory of the county, if abandoned and abolished, described in the resolution shall be attached to and become a part of the county.

History: **En. Sec. 5, Ch. 105, L. 1937; R.C.M. 1947, 16-4005; amd. Sec. 285, Ch. 571, L. 1979.**

7-2-2710. Procedure to hold election. (1) The election administrator of each of the counties, after receiving a copy of the election proclamation, shall present it to the board of county commissioners if the board is then in session or, if not in session, then at the first meeting held thereafter. The board of county commissioners of each of the counties shall issue the proclamations and give the notices of election which are required by the general laws of this state when questions are to be submitted to the qualified electors of a county at an election. The proclamation and notices shall include a description of the boundaries of that part of the county proposed to be abandoned and attached to and made a part of such county if the county is abandoned.

(2) The election administrator of each of the counties shall give notice of the closing of the registration books and shall cause the same to be closed at the time and in the manner provided by the general registration and election laws of this state.

(3) The election shall be held, voted, counted, and returns made and canvassed in the manner provided by the general election laws of this state.

History: **En. Secs. 6, 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4006, 16-4007(part); amd. Sec. 286, Ch. 571, L. 1979.**

7-2-2711. Form of ballot. (1) At such election the question to be submitted to the qualified electors of the county in which said petition was filed shall be as follows:

☐ FOR the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

☐ AGAINST the abandonment and abolishment of the county of (name) and attaching the territory within its boundaries to and making the same a part of the county or counties of (name).

(2) The question to be submitted to the qualified electors of the counties designated in the resolution as the county or counties to which the territory of the county proposed to be abandoned and abolished is to be attached and made a part shall be as follows:

☐ FOR attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

☐ AGAINST attaching to and making a part of the county of (name) a part of the territory within the boundaries of the county of (name) if the same is abandoned and abolished.

History: **En. Secs. 7, Ch. 105, L. 1937; R.C.M. 1947, 16-4007(part).**

7-2-2712. Canvass of returns — proclamation of results. (1) The board of county commissioners of each county, acting as a canvassing board, must, within 10 days after the holding of the election, canvass the returns of the election. Within 5 days thereafter, the election administrator of each county must make and enter in the records of the board a statement of the vote in the county and transmit to the secretary of state, by registered or certified mail, an abstract thereof, which shall be marked "election returns".

(2) Within 10 days after receiving the abstracts from all counties in which the election was held and on notice from the secretary of state, the board of state canvassers shall meet and canvass, compute, and determine the vote. The secretary of state, as secretary of the board, must make and file in his office a statement of it and transmit a copy thereof to the governor.

(3) Upon receipt of the copy, the governor shall issue a proclamation declaring the result of the election and shall file a copy of the proclamation in the office of the secretary of state and transmit a copy of the proclamation to the county clerk of each of the counties in which such election was held. Each county clerk shall file the same in his office and present the same to the board of county commissioners of his county if the board is then in session; otherwise, at the first meeting of the board after the copy has been received by the clerk.

History: **En. Sec. 8, Ch. 105, L. 1937; R.C.M. 1947, 16-4008; amd. Sec. 287, Ch. 571, L. 1979.**

7-2-2713. Effect of election results. (1) If at the election a majority of the votes cast in the county in which the petition for abandonment was filed are cast in favor of the abandonment and abolishment of the county and if a majority of the votes in the county designated in the petition as the county to which the territory of the abandoned county shall be attached are cast in favor of attachment, then:

(a) (i) the organization and the political and corporate existence of the county in which the petition for abandonment was filed terminate;

(ii) the county is abandoned, abolished, and disincorporated and ceases to exist; and

(iii) except as provided in subsection (2) of this section, its territory is attached to and becomes a part of the counties designated in the resolution adopted under 7-2-2707; and

(b) the terms of office of each of the officers of the abandoned county and of the members of the board of county commissioners thereof terminate at midnight on the following June 30.

(2) If at the election a majority of the votes in any adjoining county named in the resolution adopted under 7-2-2707, other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county shall attach, are cast against the attaching of any portion of the territory of the abandoned county to such adjoining county, then such portion of the territory described in the resolution attaches and becomes a part of the county designated in the petition for abandonment as the county to which the territory of the abandoned county attaches.

History: **En. Sec. 9, Ch. 105, L. 1937; R.C.M. 1947, 16-4009; amd. Sec. 14, Ch. 250, L. 1979.**

7-2-2714 through 7-2-2720 reserved.

7-2-2721. Disposition of townships. The townships of a county abandoned and abolished under this part shall be townships of the county to which the territory within such townships is attached until such time as they may be changed by the board of county commissioners of such county.

If a township of such abandoned county is divided and a part attached to one and a part attached to another adjoining county, then the board of county commissioners of the county to which attached, until further order of such board, shall attach such territory to an adjoining township within such county.

History: En. Sec. 10, Ch. 105, L. 1937; amd. Sec. 6, Ch. 253, L. 1975; R.C.M. 1947, 16-4010.

7-2-2722. Disposition of property. Each county to which any part of the territory of an abandoned county is attached and made a part shall:

(1) succeed to, have, possess, and own all real estate, all improvements thereon, all tangible property, and all county highways situated within the territory of the abandoned county attached to such county and all certificates of tax sale to lands and improvements thereon situated within such territory; and

(2) have the same right and power to sell and assign such certificates and to apply for and obtain tax deeds to such lands and improvements and to sell and dispose of the same as were or would have been possessed by the abandoned county if it had not been abandoned.

History: En. Sec. 11, Ch. 105, L. 1937; R.C.M. 1947, 16-4011.

7-2-2723. Vesting of property and legal rights. The county designated in the petition for the abandonment of a county as the county to which the territory of the abandoned county shall be attached, subject to the provisions of this part, shall:

(1) succeed to, have, possess, and own all other property, assets, liens, rights, remedies, and claims of every kind owned and belonging to or possessed by the abandoned county on the date when the same ceases to exist; and

(2) have the right to demand, collect, and receive any and all money to which such abandoned county was entitled for taxes for which tax sales had not been held, for licenses, and for other demands remaining unpaid on the date when such abandoned county ceases to exist and to enforce in any manner authorized by law any and all of such rights, remedies, and claims.

History: En. Sec. 12, Ch. 105, L. 1937; R.C.M. 1947, 16-4012.

7-2-2724. Disposition of records and other papers. (1) All maps, plats, papers, documents, records, record books, indexes, and files of every kind and description belonging to an abandoned and abolished county or in the possession of any of the officers thereof on the date when such county ceases to exist shall be, immediately after such county ceases to exist, removed to the county seat of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached. The same shall be delivered over to the custody of the proper officers of such county and be placed in the proper offices thereof and shall thereafter constitute the maps, plats, papers, documents, records, record books, indexes, and files of such county. The cost and expense of such transfer and removal shall be paid by warrants ordered drawn and issued by the board of county commissioners of such county against the general fund of such abandoned and abolished county.

(2) (a) If any part of an abandoned county shall be attached to and become a part of any adjoining county other than the county designated in the petition for abandonment, it shall be the duty of the board of county commissioners of the county designated in said petition for abandonment:

(i) to enter into a contract with some competent person or persons for transcribing so much of the records of said abandoned county as affects or relates to the property in that portion of the abandoned county which has been attached to such other county;

(ii) to prepare complete and proper indexes for such transcribed records; and

(iii) to transmit such transcribed records and indexes, when completed, to such other county.

(b) If portions of such abandoned county have been attached to more than one adjoining county, the board of county commissioners may enter into separate contracts for transcribing the records for each of such other counties or may enter into one contract for transcribing the records for all of such other counties.

(c) Chattel mortgages, mechanic's and other liens, and other instruments filed but not recorded shall not be transcribed, but the original instruments shall be transmitted to such other county or counties. The cost of transcribing, indexing, and transmitting such records shall be paid by warrants drawn by the board of county commissioners letting such contracts on the general fund of the abandoned county. All of the provisions of 7-2-2405 through 7-2-2407 shall apply to such transcribed records.

History: En. Sec. 13, Ch. 105, L. 1937; R.C.M. 1947, 16-4013.

7-2-2725. Status of continuing contracts. Except as provided in 7-2-2726, all valid and existing contracts entered into by a county abandoned and abolished under this part which, by the terms thereof, will extend beyond the time when such county ceases to exist shall continue in full force and effect as contracts of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached and made a part.

History: En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part).

7-2-2726. Status of printing contracts. (1) If the abandoned and abolished county has entered into a printing contract in accordance with the provisions of part 24 of chapter 5 and the contract is in full force and effect on the date when the county ceases to exist, the purchase of all supplies and printing for the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is attached shall be divided by the board of county commissioners of the continuing county between the contract of the abandoned county and any similar existing contract entered into by the board of the continuing county in such manner as the board considers equitable and just to the holders of both contracts until the expiration of the contract entered into by the abandoned and abolished county.

(2) When a petition is filed with the election administrator of a county for the abandonment and abolishment of the county in accordance with the provisions of 7-2-2702 and 7-2-2703, the board of county commissioners of

the county may not thereafter enter into any contract under the provisions of part 24 of chapter 5 until the time has expired when the petition may be presented to the board by the county clerk as provided in 7-2-2702 and 7-2-2703.

History: **En. Sec. 14, Ch. 105, L. 1937; R.C.M. 1947, 16-4014(part); amd. Sec. 15, Ch. 250, L. 1979; amd. Sec. 288, Ch. 571, L. 1979.**

7-2-2727. Effect of abandonment on school and special districts. (1) All school districts and other special districts of an abandoned and abolished county shall continue as and be such school districts and special districts of the county to which such territory is attached and becomes a part. The members of the boards of trustees or directors of such school districts or other special districts shall continue to be the trustees and directors thereof until the terms of office for which they were elected or appointed shall expire. If any of such school districts shall bear the same numbers as school districts of the county to which the territory within the boundaries of such abandoned and abolished county is attached and made a part, the county superintendent shall either renumber the school districts of said abandoned and abolished county or shall give them such designation in addition to their numbers as will distinguish them from the districts in the county to which such territory is attached and made a part. If the territory of any school district shall be divided and parts attached to two or more counties, such school district shall be a joint school district of such counties.

(2) All funds of all school districts and of all other special districts of an abandoned and abolished county shall be transferred to and paid over to the county treasurer of the county to which the territory of such school district is attached and becomes a part and shall be accounted for by said county treasurer as the funds of such districts. If a joint school district is created, the state superintendent of public instruction shall designate the county treasurer to whom such funds are to be transferred and paid over. All taxes levied for all school funds and funds of other special districts of such abandoned and abolished county remaining unpaid at the time said county ceased to exist and all other money which would have accrued to such funds if said county had not been abandoned and abolished, when received by such county treasurer, shall be deposited to the credit of the proper school or special district funds.

History: **En. Sec. 22, Ch. 105, L. 1937; R.C.M. 1947, 16-4022.**

7-2-2728. Effect of abandonment on county high schools. (1) If a county high school shall have been established in any abandoned and abolished county when such county ceases to exist, such county high school shall become the high school of the district in which it is situated or located and all property, both real and personal, owned by such county or acquired for and used in connection with the maintenance and operation of such county high school shall become and be the property of such school district to be used by such school district for the maintenance and operation of such district high school. All lawful existing contracts of such county high school shall be assumed by and become the contracts of such school district. The terms of office of all trustees of such county high school shall cease and terminate at the time the existence of said abandoned and abolished county shall cease and terminate.

(2) All money in all county high school funds shall be transferred and paid over to the treasurer of the county to which the territory in which the school district succeeding to the property of the county high school is attached and made a part and used and applied as follows:

(a) Any money in any bond sinking and interest funds shall be used for the payment and interest on any unpaid and outstanding high school bonds.

(b) (i) If there shall be outstanding any high school warrants at the time such county high school ceases to exist, then all money in such county high school funds, except sinking and interest funds, shall be used for the payment of such warrants, with interest thereon.

(ii) If such money is insufficient to pay all outstanding warrants, with the interest thereon, then such warrant indebtedness shall be assumed by and become warrant indebtedness of such school district.

(c) If there be no such high school warrants outstanding, then the money in such funds shall be transferred to the high school fund of the school district which, under the provisions of this part, is to maintain such high school as a district high school.

(3) (a) All taxes levied for any sinking and interest fund for county high school bonds and remaining unpaid at the time the abandoned and abolished county ceases to exist, when collected, shall be deposited to the credit of such fund.

(b) All taxes levied for high school purposes and remaining unpaid when such county ceases to exist and all other money which would have gone to such high school if the county had not been abandoned and abolished, when collected, shall be deposited to the proper high school funds of the district in the county to which the territory of the abandoned and abolished county has been attached and made a part.

History: **En. Sec. 23, Ch. 105, L. 1937; R.C.M. 1947, 16-4023.**

7-2-2729. Tax liability of property within abandoned county for debts of continuing county. (1) Whenever a county is abandoned and abolished and its territory is attached to and made a part of an adjoining county under the provisions of this part, none of the property situated within the boundaries of such abandoned and abolished county shall be subjected to taxation or taxed for the payment of any indebtedness of such adjoining county which may exist at the time such territory is attached to and made a part of such adjoining county.

(2) If an adjoining county to which the territory of an abandoned and abolished county is attached and made a part shall have outstanding and unpaid bonds at the time such territory is attached to and made a part of such county, such bonds shall be the indebtedness of such adjoining county. None of the property situated within the territory of the abandoned county shall be subjected to any taxes to pay the principal or interest of such bonds, but such taxes shall be levied only against the property within the boundaries of such adjoining county as the same existed before the territory of the abandoned and abolished county was attached to and made a part thereof.

History: **En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(part).**

7-2-2730. Establishment of special warrant district or special funding bond district in continuing county. (1) After all warrants have been drawn and issued against the funds of such adjoining county to pay the claims and demands existing against such county on the date when the territory of such abandoned and abolished county was attached to such adjoining county, all money in the funds of such adjoining county shall be used and applied in payment of the warrants drawn against its respective funds. If such money is not sufficient to pay all of such warrants, with the interest thereon, then the board of county commissioners shall make an order creating a special warrant district and shall include within such district all of the territory of such adjoining county but shall not include therein any of the territory of such abandoned and abolished county and shall, thereafter and at the time of making levies for county purposes, levy a special tax against all taxable property in such district to pay the warrants, with interest thereon, outstanding against the funds of said county. The board may in its discretion extend such tax levy over a period of not to exceed 3 years.

(2) (a) If it shall appear to the board that it will require too large a tax levy to pay such warrant indebtedness, with interest thereon, within 3 years, such board, instead of creating a special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory within such adjoining county but shall not include therein any of the territory of the abandoned and abolished county attached to such adjoining county. After all money in the several funds of said county applicable thereto has been applied in payment of such outstanding warrants and interest thereon and without submitting the question of doing so to an election, such board may issue bonds in an amount sufficient to pay and redeem all such warrants remaining outstanding, with interest thereon.

(b) Such bonds shall be issued in the name of said adjoining county and shall contain recitals to the effect that the principal and interest thereof will be paid by millage tax levies against the property situated within the boundaries of said county as the same existed before the territory of such abandoned and abolished county was attached thereto and that none of the property within the territory of such abandoned and abolished county will be subjected to such levies. Except as otherwise provided herein, said bonds shall be issued and sold and tax levies shall be fixed and made to pay the principal and interest thereof as the same becomes due in the manner provided by 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 and all the provisions thereof, so far as applicable thereto, shall apply to such bonds.

History: **En. Sec. 18, Ch. 105, L. 1937; R.C.M. 1947, 16-4018(a), (b).**

7-2-2731 through 7-2-2740 reserved.

7-2-2741. Processing of claims against abandoned county. (1) All claims and demands against any abondoned and abolished county for salaries, services, wages, materials, and supplies; for all other current expenses; and for claims and demands accruing under contracts and for which said county was liable at the time it ceased to exist and which had not been approved and warrants issued therefor prior to the time it ceased to exist shall be presented to the board of county commissioners of the county designated in the petition for abandonment as the county to which its territory is attached and made a part. Except as provided in subsection (2), all such claims and demands shall be acted on by the board of such county, and warrants shall be issued in payment thereof in the same manner as though the same had been incurred by such county.

(2) All such warrants shall be drawn and issued against the proper funds of such abandoned and abolished county. No such claim or demand shall be approved or warrant issued in payment thereof if the amount of such claim or demand exceeds the unexpended balance of appropriation for such purpose contained in the budget of the abandoned and abolished county for the year in which the same was incurred.

History: En. Sec. 15, Ch. 105, L. 1937; R.C.M. 1947, 16-4015.

7-2-2742. Transfer and use of funds of abandoned county. (1) All money in each of the funds of an abandoned and abolished county shall be transferred to and paid over by the treasurer thereof to the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and shall be kept and maintained by such treasurer in separate funds in the name of such abandoned and abolished county and, except as provided in subsection (2), used and applied for paying warrants issued against such funds by the abandoned and abolished county prior to the time it ceased to exist and for paying warrants issued against such fund by the board of county commissioners of the county to which it is attached and becomes a part under the provisions of 7-2-2724 and 7-2-2741 and the interest on such warrants.

(2) Money in any bond sinking and interest funds of such abandoned and abolished county shall be used and applied for the sole purpose of paying the interest and principal becoming due on unpaid and outstanding bonds of such county.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2743. Collection of taxes and other money. Taxes levied for all such funds which were delinquent on the day when such county ceased to exist and for which tax sales had not been held and all licenses and other money owing to such county at such time shall be collected by the treasurer of the county designated in the petition for abandonment as the county to which its territory is to be attached and become a part and placed in and deposited to the credit of the funds of such abandoned and abolished county to which the same properly belong.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2744. Transfer of money when claims against fund satisfied. (1) When all warrants issued and outstanding against any fund of an abandoned and abolished county, with the interest thereon, have been fully paid, any balance standing to the credit of such fund shall be transferred to any other fund or funds of such county in which there is not sufficient money to pay the warrants issued and outstanding against the same, with interest thereon.

(2) If, after payment of all warrants issued against all such funds, balances remain in any thereof, the same shall be transferred to and become a part of the bond sinking and interest funds of such abandoned county.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2745. Procedure if insufficient funds — special warrant district or special funding bond district. (1) After all warrants have been drawn and issued against the funds of an abandoned and abolished county under the provisions of 7-2-2724 and 7-2-2741, if it shall appear to the satisfaction of the board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county is to be attached and made a part that the money in the several funds of such abandoned and abolished county, together with all money which may be received for such funds from the payment and collection of delinquent taxes, unpaid licenses, and other sources owing to such abandoned and abolished county, will be insufficient to pay all outstanding and unpaid warrants issued and drawn against such funds, then the board of such county shall make an order creating a special warrant district and shall include within such district all of the territory embraced within the boundaries of the abandoned and abolished county at the time it ceased to exist.

(2) If it shall appear to the satisfaction of the board that a tax levy sufficient to pay such warrants and interest, when spread over a term of 3 years, will be too great a hardship on and too burdensome to the taxpayers owning property within the boundaries of such abandoned and abolished county, said board, instead of creating such special warrant district, shall create and establish a special funding bond district and shall include within the boundaries thereof all of the territory embraced within the boundaries of such abandoned and abolished district at the time it ceased to exist.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2746. Details relating to special warrant district. (1) The board of county commissioners creating a special warrant district shall, thereafter and at the time of making and fixing tax levies for county purposes, make and fix a levy against all taxable property within such special warrant district for the payment of said warrants and the interest thereon. The proceeds of such levy, when collected, shall be deposited by the county treasurer in a separate fund which shall be used for the payment of said warrants and interest and for no other purpose.

(2) Said tax levy need not be made at such a rate as will pay all of said warrants, with interest, in 1 year, but if said board shall deem it for the best interests of the taxpayers owning property within such special warrant district, such levy may be spread over a term of not more than 3 years.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2747. Details relating to special funding bond district. (1) The board of county commissioners and the county clerk of the county to which the territory of such abandoned and abolished county has been attached and made a part shall be, respectively, the board of trustees and the clerk of a special funding bond district created pursuant to 7-2-2745(2), and the county treasurer shall act as the treasurer thereof. The board of trustees shall adopt an appropriate seal for such district.

(2) (a) After such district has been created and established, the board of trustees shall direct the county treasurer to use and apply all money in the several funds of the abandoned and abolished county, except money in any bond sinking and interest funds, to the payment of warrants issued and outstanding against such funds, with the interest thereon. Said board of trustees shall thereupon issue and sell bonds of such special funding bond district in an amount sufficient to pay all warrants against such funds remaining outstanding and unpaid, with the interest thereon. The proceeds derived from the sale of such bonds shall be used for such purpose and no other.

(b) All taxes levied for the payment of the principal and interest of such bonds, all taxes levied by the abandoned and abolished county for all of its funds (except bond sinking and interest funds) delinquent at the time such county ceased to exist, and all money owing to such abandoned and abolished county from all other sources shall be, when collected, paid into a special sinking and interest fund and used for the purpose of paying the principal and interest of such bonds and for no other purpose.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2748. Special funding bond district bonds. (1) Bonds issued under 7-2-2747 shall not be issued for a longer period than 10 years and shall be issued without submitting the question of doing so to any election. Such bonds shall be issued in the name of such district and shall be signed by the trustees. The clerk shall attest the same and affix the seal of the district thereof, and they shall be registered in the office of the county treasurer, who shall certify such registration on such bonds. Except as otherwise provided herein and insofar as the same are not in conflict herewith, all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the issuance, sale, and payment of such bonds, with the interest thereon, and the levying of taxes for such purposes.

(2) There shall be inserted and made a part of each such bond statements setting forth the purpose for which the same is issued and that said bonds do not incur, create, or constitute any indebtedness or obligation whatever on the part of the county of (naming the county whose board of county commissioners, acting as such trustees, are issuing such bonds) but that the principal and interest thereof will be paid by special millage taxes levied against all of the taxable property situated within the boundaries of such special funding bond district.

History: En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).

7-2-2749. Payment of outstanding bonds of abandoned county. (1) If any abandoned and abolished county shall have any bonds outstanding and unpaid at the time it ceases to exist, the territory within the boundaries of such county as they existed when such county so ceased to exist shall constitute a special district for the payment thereof. The board of county commissioners of the county designated in the petition for abandonment as the county to which the territory of such county is to be attached and made a part shall annually levy a tax against all taxable property in such taxing district sufficient to pay the interest and principal of such bonds as the same become due, and all of the provisions of 7-7-107, 7-7-108, 7-7-123, 7-7-124, 7-7-2104 through 7-7-2106, and parts 22 and 23 of chapter 7 shall apply to, govern, and control the levying and collection of such taxes and the payment of interest and principal thereof by the boards and officers of the county within which such district is situated.

(2) Any and all money in any bond sinking and interest funds of such abandoned and abolished county, when transmitted and paid over to the treasurer of the county to which the territory of such abandoned and abolished county has been attached, shall be credited to and deposited in a sinking and interest fund. All taxes levied for the payment of such bonds and interest and delinquent at the time such county ceased to exist, all taxes levied for such sinking and interest fund in accordance with the provisions of 7-2-2742 through 7-2-2750, and all other money coming to the hands of such county treasurer for the use or benefit of such abandoned county, when not required for any other purposes under the provisions of this part, shall be deposited to the credit of such sinking and interest fund and used for the payment of the principal and interest of such bonds and for no other purpose.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2750. Procedure to collect and transmit taxes when several counties involved. (1) Whenever any levy is made under the provisions of 7-2-2745 through 7-2-2749, the county clerk of the county in which the board of county commissioners makes such levy shall immediately certify such levy to the county clerk of each other county to which any part of the territory of the abandoned county has been attached.

(2) (a) The county clerk of each such other county shall compute and extend the taxes against the property within the portion of the abandoned county which has been attached to his county, and the treasurer of such county shall collect the same at the same time and in the same manner that other taxes are collected by said county treasurer.

(b) Each such treasurer shall, at least twice each year, once during the second week in December and once during the second week in June, transmit the amount of all such taxes paid to and collected by him and then in his hands as county treasurer to the treasurer of the county in which the board made such tax levy.

History: **En. Sec. 16, Ch. 105, L. 1937; R.C.M. 1947, 16-4016(part).**

7-2-2751. Disposition of money of abandoned district. If, after all warrants issued and drawn by an abandoned and abolished district during its existence against its several funds and all warrants drawn and issued against said funds under the provisions of 7-2-2724 and 7-2-2741 have been fully paid, with the interest thereon:

(1) any balance remains in such funds, such balance, with any and all money thereafter accruing to any of such funds from the collection of delinquent taxes, unpaid licenses, and from other sources shall be deposited:

(a) to the credit of any special sinking and interest fund for the payment of district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748; and

(b) if there be no such fund, then to the credit of any bond sinking and interest fund under 7-2-2749 and 7-2-2750; and

(2) after all warrants issued and drawn against any of such funds with the interest thereon, and all district funding bonds issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748 and all bonds referred to in 7-2-2749 have been fully paid, then any balance remaining in any of such funds and all money accruing to any or all of such funds thereafter from any and all sources shall be deposited to the credit of such funds of the county designated in the petition for abandonment as the county to which the territory of the abandoned and abolished county has been attached and made a part, as its board of county commissioners may direct.

History: En. Sec. 17, Ch. 105, L. 1937; R.C.M. 1947, 16-4017.

7-2-2752. Liability for and payment of indebtedness of abandoned county. It is intended by the provisions of this part that no part of the indebtedness of an abandoned and abolished county shall be assumed by, become an obligation of, or be paid by a county to which the territory of the abandoned and abolished county is attached and made a part, but that all money in all funds of an abandoned and abolished county at the time it ceases to exist and all money thereafter received by such funds from the payment of delinquent taxes and unpaid licenses and from all other sources owing to such county at the time it ceased to exist and all money received from the rental or sale of the property owned by such county shall be used for the payment of its indebtedness existing at the time it ceased to exist and the cost and expense of attaching its territory to and making it a part of any adjoining county. Such county to which any part of its territory is attached and made a part shall receive only such balance of any such money as may remain after all of the indebtedness and cost are fully paid.

History: En. Sec. 21, Ch. 105, L. 1937; R.C.M. 1947, 16-4021.

7-2-2753. Assessment of property in abandoned county. (1) The county assessor of a county abandoned and abolished under the provisions of this part shall, within 10 days after it ceases to exist, deliver to the county assessor of each county to which any part of its territory has been attached all assessment lists, reports, documents, and instruments relating to, concerning, or in any way affecting the assessment during the then-current assessment year of all taxable property within such portion of the abandoned and abolished county. The county assessor of the abandoned and abolished county shall, until midnight of June 30 of the year when the county ceases to exist, aid and assist the county assessors of the counties to which any part of the territory to be abandoned and abolished will be attached in the listing and assessing of all taxable property situated or located within each of such counties, to the end that all taxable property within the boundaries of the abandoned county will be fully assessed and taxed.

(2) It is the duty of the assessor of the county to whom such assessment lists, reports, documents, and instruments have been delivered by the assessor of the abandoned and abolished county to complete all assessments and

to fully assess, during the then-current assessment year, all taxable property situated or located on January 1 of such year within the boundaries of such part of the abandoned and abolished county. Each such county assessor shall, in all matters and things connected in any way with the making of such assessments, have, possess, and exercise all of the powers and rights and shall perform all of the duties which the assessor of the abandoned and abolished county would or could have had, possessed, exercised, or performed if the county had not been abandoned and abolished.

History: En. Sec. 19, Ch. 105, L. 1937; amd. Sec. 2, Ch. 388, L. 1975; R.C.M. 1947, 16-4019; amd. Sec. 16, Ch. 250, L. 1979.

7-2-2754. Ownership and management of property acquired by continuing county. Each county to which any part of an abandoned and abolished county is attached becomes the owner, under the provisions of this part, of the real and tangible personal property of the abandoned and abolished county and may use all of this property for county purposes, may lease any of this real estate, or may sell any of the real estate or personal property.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(1).

7-2-2755. Lease of acquired real property. No real property may be leased unless the board of county commissioners presents to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. The petition shall be approved by the judge and filed in the office of the clerk of the county.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(3).

7-2-2756. Sale of acquired real property. (1) No real estate may be sold by the board of county commissioners unless the property has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county is attached, on petition of the board of such county. Every sale of real estate shall be made at public sale, and notice shall be published in the official newspaper of the county once a week for at least 2 weeks immediately prior to the date for holding the same. No such real estate shall be sold for a price less than 90% of the appraised value thereof.

(2) The full purchase price of any real estate so sold shall not be required to be made in one payment; but the purchaser thereof may pay the same in four installments, the first of which shall be not less than 25% of the purchase price, to be paid at the time of purchase, with the remainder to be paid in three equal annual installments with interest thereon at not less than 5% per annum. Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for real estate, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(3) All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in

interest at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid, when such real estate shall be assessed at its full cash value. Any and all improvements placed on any such real estate after its purchase shall be subject to assessment and taxation at the full cash value thereof.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2757. Sale of acquired personal property. (1) No personal property having a value in excess of $100 may be sold unless it has been appraised within 1 year immediately prior to the date of sale by three taxpayers who reside within the territory of the abandoned and abolished county and who were appointed by the judge of the district court to which the county succeeding to the ownership of the property is attached, on petition of the board of county commissioners thereof. No sale of any personal property may be made except at public sale after notice or for a price less than 90% of the appraised value.

(2) Whenever the purchase price of any real estate is to be paid in installments, the board shall enter into a contract with the purchaser thereof, and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property, the chairman of the board shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2758. Compensation for appraisers. The compensation of all appraisers appointed under the provisions of 7-2-2756 and 7-2-2757 shall be fixed by the district judge appointing the same.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

7-2-2759. Distribution of money derived from acquired property. (1) Money received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such county to the treasurer of the county designated in such petition for abandonment.

(2) All money received from the sale of personal property and from the leasing or sale of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

(a) if there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such money shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of 7-2-2745(2), 7-2-2747, and 7-2-2748, then the money shall be deposited in the sinking and interest fund for district bonds;

(c) if there are no district bonds outstanding, then the money shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there are no bonds outstanding, then the money shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the taxable value of the property in each part on January 1 immediately preceding the abandonment bears to the taxable value of all the property in the abandoned county, and the apportioned money shall be deposited in the funds of each county as the boards of county commissioners of the counties may direct.

History: En. Sec. 20, Ch. 105, L. 1937; amd. Sec. 40, Ch. 566, L. 1977; R.C.M. 1947, 16-4020(part).

Parts 28 through 40 reserved

Part 41

Organization and Incorporation of New Municipalities

7-2-4101. Petition to organize municipalities. (1) Whenever the inhabitants of any part of a county desire to be organized into a city or town, they may apply by petition in writing, signed by not less than two-thirds of the registered electors but not more than 300 such electors, who are residents of the state and residing within the limits of the proposed incorporation, to the board of county commissioners of the county in which the territory is situated.

(2) (a) The petition must describe the limits of the proposed city or town and of the several wards thereof, each of which shall contain 150 or more registered electors and must not exceed 1 square mile for each 500 inhabitants resident therein.

(b) The petitioners must annex to the petition a map of the proposed territory to be incorporated and state the name of the city or town.

(3) The petition and map must be filed in the office of the election administrator.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part); amd. Sec. 289, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-4102. Census of proposed municipality. Upon filing the petition, the board of county commissioners, at its next regular or special meeting, must appoint some suitable person to take a house-to-house census of the residents of the territory to be incorporated. After taking the census, the person appointed to take the same must return the list to the board, and the same must be filed by it in the county clerk's office.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part).

7-2-4103. Prerequisites to organization of municipality. No municipal corporation may be formed unless:

(1) the number of inhabitants is 300 or upwards; and

(2) the boundary of the proposed territory to be incorporated is more than 3 miles from the boundary, measured from the nearest point between the two, of any presently incorporated city or town or there is presented to the board appropriate evidence that any presently incorporated city or town within 3 miles which legally could annex has refused to annex the proposed territory.

History: En. Sec. 315, 5th Div. Comp. Stat. 1887; re-en. Sec. 4720, Pol. C. 1895; re-en. Sec. 3208, Rev. C. 1907; amd. Sec. 1, Ch. 56, L. 1909; re-en. Sec. 4961, R.C.M. 1921; re-en. Sec. 4961, R.C.M. 1935; amd. Sec. 1, Ch. 86, L. 1973; amd. Sec. 1, Ch. 515, L. 1973; R.C.M. 1947, 11-203(part).

7-2-4104. Election on question of organization. (1) After filing the petition and census, if there is the requisite number of inhabitants for the formation of a municipal corporation as required in 7-2-4103, the county commissioners must call an election of all the registered electors residing in the territory described in the petition.

(2) The election must be held at a convenient place within the territory described in the petition, to be designated by the board.

(3) The ballots used at the election must contain the words "For incorporation" or "Against incorporation", and all elections must be conducted as provided in Title 13.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 290, Ch. 571, L. 1979.

7-2-4105. Notice of election on question of organization. Notice of the election shall be published as provided in 13-1-108. The notice shall contain a description of the boundaries of the city or town.

History: En. Sec. 316, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4721, Pol. C. 1895; re-en. Sec. 3209, Rev. C. 1907; re-en. Sec. 4962, R.C.M. 1921; re-en. Sec. 4962, R.C.M. 1935; R.C.M. 1947, 11-204(part); amd. Sec. 291, Ch. 571, L. 1979.

7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners must give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published therein, by posting notices in six public places within the limits of the corporation of the time and place or places of holding the first election for offices of the corporation.

(2) At such election all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board must appoint election judges and canvass and declare the result thereof. The election must be conducted in the manner required by law for the election of county officers.

History: En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Secs. 4722, 4723, Pol. C. 1895; re-en. Secs. 3210, 3211, Rev. C. 1907; re-en. Secs. 4963, 4964, R.C.M. 1921; re-en. Secs. 4963, 4964, R.C.M. 1935; R.C.M. 1947, 11-205, 11-206(part); amd. Sec. 292, Ch. 571, L. 1979.

7-2-4107. Officers elected at first election. (1) At such election there must be elected:

(a) in a city of the first class, a mayor, a city judge, a city attorney, a city treasurer, a city marshal, and two aldermen from each ward into which the city may be divided;

(b) in a city of the second class, a mayor, a city judge, a city treasurer, a city marshal, and two aldermen from each ward;

(c) in a town, a mayor and two aldermen from each ward.

(2) Those elected hold office until the first Monday of January after the first annual election and until their successors are elected and qualified. The persons so elected must qualify in the manner prescribed by law for county officers.

History: **En. Sec. 318, 5th Div. Comp. Stat. 1887; amd. Sec. 2, p. 178, L. 1889; re-en. Sec. 4723, Pol. C. 1895; re-en. Sec. 3211, Rev. C. 1907; re-en. Sec. 4964, R.C.M. 1921; re-en. Sec. 4964, R.C.M. 1935; R.C.M. 1947, 11-206(part); amd. Sec. 380, Ch. 571, L. 1979.**

Part 42

Addition to Municipalities

7-2-4201. Additions to municipalities. Whenever territory adjoining any incorporated city or town is surveyed and laid off into streets or blocks as an addition thereto, said territory may become a part of such city or town:

(1) upon filing the map or plat thereof in the office of the county clerk; and

(2) upon the approval of the mayor and a majority of the council endorsed thereon.

History: **En. Sec. 4724, Pol. C. 1895; re-en. Sec. 3212, Rev. C. 1907; re-en. Sec. 4976, R.C.M. 1921; re-en. Sec. 4976, R.C.M. 1935; R.C.M. 1947, 11-401.**

7-2-4202. Control of additions. The council has control of all such additions.

History: **En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).**

7-2-4203. Imposition of conditions for approval of addition. (1) The council has power by ordinance to compel the owners of these additions to lay out streets, avenues, and alleys, so as to have the same correspond in width and direction and be continuations of the streets, avenues, and alleys in the city or town or in the addition thereto contiguous to or near the proposed addition.

(2) The owner of any addition has no rights or privileges unless the terms and conditions of the ordinance are complied with and the plat thereof has been submitted to and approved by the mayor and council and such approval endorsed thereon.

History: **En. Sec. 4725, Pol. C. 1895; re-en. Sec. 3213, Rev. C. 1907; re-en. Sec. 4977, R.C.M. 1921; re-en. Sec. 4977, R.C.M. 1935; R.C.M. 1947, 11-402(part).**

7-2-4204. Applicability of part. When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: **En. Sec. 3, Ch. 642, L. 1979.**

Compiler's Comments

Codification. Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4205. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979.**

Part 43

Annexation of Contiguous Land

7-2-4301. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: **En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.**

7-2-4302. Annexation of contiguous municipalities. (1) When a city or town desires to be annexed to a contiguous city or town, the council of each thereof must appoint three commissioners to arrange and report to the municipal authorities, respectively, the terms and conditions on which the annexation can be made.

(2) If the city or town council of the municipal corporation to be annexed approves of the terms thereof, it must by ordinance so declare and thereupon submit the question of annexation to the electors of the respective cities or towns. If a majority of the electors vote in favor of annexation, the council must so declare and a certified copy of the proceedings for annexation and of the ordinances must be filed with the clerk of the county in which the cities or towns so annexed are situated.

(3) When the copy of the proceedings and the ordinances is filed, the annexation is complete and the city or town to which the annexation is made has power, in addition to other powers conferred by this title, to pass all necessary ordinances to carry into effect the terms of the annexation.

(4) Such annexations do not affect or impair any rights, obligations, or liabilities then existing for or against either of such cities or towns.

History: **En. Sec. 322, 5th Div. Comp. Stat. 1887; re-en. Sec. 4727, Pol. C. 1895; re-en. Sec. 3215, Rev. C. 1907; re-en. Sec. 4979, R.C.M. 1921; re-en. Sec. 4979, R.C.M. 1935; R.C.M. 1947, 11-405.**

7-2-4303. Restrictions on annexation power. Land used for industrial or manufacturing purposes shall not be included in such city under the provisions of 7-2-4311 through 7-2-4314 and 7-2-4321 through 7-2-4325 without the consent in writing of the owners of such land.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4304. Applicability of part. When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 3, Ch. 642, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4305. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979.

7-2-4306 through 7-2-4310 reserved.

7-2-4311. Annexation of contiguous land by cities of the first class. Any tracts or parcels of land which have been or may hereafter be platted into lots or blocks, streets, and alleys or platted for parks and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof and the boundaries of such city of the first class extended so as to include the same in the manner provided in 7-2-4312 through 7-2-4314.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4312. Resolution of intent by first-class city — notice. When, in the judgment of any city council of a city of the first class expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed that the boundaries of such city shall be extended so as to include the same within the corporate limits thereof, the city clerk of such city shall:

(1) immediately notify in writing, addressed to the address to which tax notices are sent, all owners of property in the territory to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4313. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city clerk will receive expressions, in writing, of approval or disapproval of the proposed extensions of the boundaries of such city of the first class from freeholders of the territory proposed to be embraced therein.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4314. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said 20 days, lay before the same all communications in writing so received by him for its consideration. Except as provided in subsection (2), if after considering the same such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed; the time when the same shall go into effect to be fixed by such resolution.

(2) Such resolution shall not be adopted by such council if disapproved in writing by a majority of the resident freeholders of the territory proposed to be embraced, and no further resolutions relating to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition for a period of 1 year from the date of disapproval.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4315 through 7-2-4320 reserved.

7-2-4321. Annexation of contiguous land by municipalities of the second or third class. Any tracts or parcels of land which shall be contiguous to any incorporated cities or towns of the second and third class may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the manner provided in 7-2-4322 through 7-2-4325.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4322. Resolution of intent by second- or third-class municipality — notice. When, in the judgment of any such city or town council expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city or town and the inhabitants thereof and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall:

(1) forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced; and

(2) cause a notice to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for 2 successive weeks.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4323. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive expressions in writing of approval or disapproval of the proposed extensions of the boundaries of such city or town from freeholders of the territory proposed to be embraced therein.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4324. Hearing on question of annexation — resolution of annexation. (1) The clerk shall, at the next regular meeting of the city or town council after the expiration of said 20 days, lay before the same all communications in writing so received by him for its consideration. Except as provided in subsection (2), if after considering the same such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class shall be extended so as to embrace and include such tracts or parcels of land; the time when the same shall go into effect to be fixed by such resolution.

(2) Such resolution shall not be adopted by such council if disapproved in writing by a majority of the freeholders of the territory proposed to be embraced.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4325. Consolidation of proceedings for two or more tracts. Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under 7-2-4321 through 7-2-4325, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. Sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957;

amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(3).

Part 44

Annexation of Contiguous Government Land

7-2-4401. What constitutes contiguous land for purpose of part. The land proposed to be annexed to a municipality under the provisions of this part shall be deemed contiguous to such municipality even though such land may be separated from such municipality by a street or other roadway, a sidewalk, a public way of any kind, an irrigation ditch or drainage ditch, or some other strip too small for the erection of houses.

History: En. Sec. 2, Ch. 189, L. 1957; R.C.M. 1947, 11-512.

7-2-4402. Annexation of contiguous government land. Whenever any land contiguous to a municipality is owned by the United States or by the state of Montana or by any agency, instrumentality, or political subdivision of either or whenever any of the foregoing have a beneficial interest in any land contiguous to a municipality, such land may be incorporated and included in the municipality to which it is contiguous and may be annexed thereto and made a part thereof in the manner provided in this part.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4403. Request for annexation by government official. The administrative head of the owner of land referred to in 7-2-4402 or the administrative head of the holder of a beneficial interest in such land shall file with the clerk of the municipality a description of the land, a certification of ownership or of beneficial interest therein, and a statement that the owner of or the holder of the beneficial interest in the land desires to have it annexed.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4404. Resolution of intent to annex. Upon receiving the request provided for in 7-2-4403, the governing body of the municipality shall pass a resolution reciting its intention to annex the land and setting a time and place for a public hearing thereon.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4405. Notice of resolution — protest period. The clerk of the municipality shall forthwith cause to be published in the newspaper nearest such land, at least once a week for 2 successive weeks, a notice that such resolution has been duly and regularly passed and that for a period of 20 days after the first publication of such notice, such clerk will receive expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of the municipality. Said notice shall also state the time and place set for the public hearing on the proposed annexation.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(2).

7-2-4406. Hearing on question of annexation — resolution of annexation. (1) At the time and place set for the aforesaid public hearing, the governing body of the municipality shall hear all persons and all things relative to the proposed annexation.

(2) If the governing body shall find that it is to the best interests of the municipality and its inhabitants to annex the land, it shall adopt a resolution of annexation of the land. Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said municipality shall be as set forth in said resolution.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4407. Filing of resolution and other papers. Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of the municipality, together with a map showing the corporate limits of said municipality as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said municipality is located.

History: En. Sec. 1, Ch. 189, L. 1957; R.C.M. 1947, 11-511(part).

7-2-4408. Applicability of part. When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 3, Ch. 642, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4409. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979.

Part 45

Annexation of Wholly Surrounded Land

7-2-4501. Annexation of wholly surrounded land by cities of the first class. A city of the first class may include as part of the city any platted or unplatted tract or parcel of land that is wholly surrounded by the city upon passing a resolution of intent, giving notice, and passing a resolution of annexation. Except as provided in 7-2-4502, the provisions of 7-2-4312 through 7-2-4314 apply to these resolutions and the notice requirement.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part); amd. Sec. 17, Ch. 250, L. 1979.

7-2-4502. Protest not available. Such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders of the land to be annexed object.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd.

Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4503. Restrictions on annexation power. Land shall not be annexed under this part whenever the land is used:

(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose; or

(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto.

History: En. Sec. 1, Ch. 30, L. 1905; re-en. sec. 3214, Rev. C. 1907; re-en. Sec. 4978, R.C.M. 1921; amd. Sec. 1, Ch. 52, L. 1925; re-en. Sec. 4978, R.C.M. 1935; amd. Sec. 1, Ch. 239, L. 1957; amd. Sec. 1, Ch. 238, L. 1959; amd. Sec. 1, Ch. 217, L. 1961; amd. Sec. 1, Ch. 281, L. 1967; amd. Sec. 1, Ch. 510, L. 1977; R.C.M. 1947, 11-403(part).

7-2-4504. What constitutes contiguous lands. Tracts or parcels of land proposed to be annexed to a city or town under the provisions of this part shall be deemed contiguous to such city or town even though such tracts or parcels of land may be separated from such city or town by a street or other roadway, irrigation ditch, drainage ditch, stream, river, or a strip of unplatted land too narrow or too small to be platted.

History: En. Sec. 1, Ch. 95, L. 1945; amd. Sec. 1, Ch. 16, L. 1955; R.C.M. 1947, 11-404.

7-2-4505. Applicability of part. When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: En. Sec. 3, Ch. 642, L. 1979.

Compiler's Comments

Codification. Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4506. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: En. Sec. 2, Ch. 642, L. 1979.

Part 46

Annexation by Petition

7-2-4601. Annexation by petition. (1) The boundaries of any incorporated city or town, whether heretofore or hereafter formed, may be altered and new territory or territories annexed thereto, incorporated and included therein, and made a part thereof upon proceedings being had and taken as provided in this part.

(2) The council or other legislative body of any such municipal corporation, upon receiving a written petition therefor containing a description of the new territory or territories asked to be annexed to the corporation and

signed by not less than 33 ⅓% of the registered electors of the territory proposed to be annexed, must without delay submit to the electors of the municipal corporation and to the registered electors residing in the territory or territories proposed by the petition to be annexed to the corporation, the question whether the new territory or territories shall be annexed to, incorporated in, and made a part of the municipal corporation.

(3) The governing body of a municipality, upon receiving a written petition containing a description of territory requested to be annexed and signed by more than 50% of the resident freeholder electors of the territory to be annexed, need not submit the question of annexation to the qualified electors as provided in subsection (2). The governing body may approve or disapprove the petition upon its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.

History: En. Sec. 1, Ch. 168, L. 1947; R.C.M. 1947, 11-506(1); amd. Sec. 293, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 641, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-4602. Election on question of annexation by petition. (1) The question of annexation may be submitted at the next general municipal election to be held in the municipal corporation or it may be submitted prior to the general election, either at a special election called for that purpose or at any other municipal election, except an election at which the submission of such question is prohibited by law.

(2) The election shall be conducted and the returns made in the same manner as other city or town elections. All election laws governing city and town elections shall govern, insofar as they are applicable.

(3) Whenever the question of annexation under this title is submitted at either a general city or town election or at a special election, separate ballots, shall be provided therefor.

History: En. Secs. 1, 2, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part), 11-507(part); amd. Sec. 294, Ch. 571, L. 1979.

7-2-4603. Notice of election. (1) The council or legislative body shall publish notice of the election as provided in 13-1-108.

(2) Such notice shall distinctly state the proposition to be submitted, i.e., that it is proposed to annex to, incorporate in, and make a part of such municipal corporation the territory or territories sought to be annexed, specifically describing the boundaries thereof.

(3) The notice of election shall designate the date of the election.

History: En. Sec. 1, Ch. 168, L. 1945; R.C.M. 1947, 11-506(part); amd. Sec. 295, Ch. 571, L. 1979.

7-2-4604. Repealed. Sec. 407, Ch. 571, L. 1979.

7-2-4605. Repealed. Sec. 407, Ch. 571, L. 1979.

7-2-4606. Resolution of annexation. (1) (a) If it is found that a majority of votes were cast in favor of the annexation, the city or town council or other legislative body shall, at a regular or special meeting held within

30 days thereafter, pass and adopt a resolution providing for such annexation.

(b) Such resolution shall recite that a petition has been filed with the said council or other legislative body with a sufficient number of signatures of 33 ⅓% of the resident freeholder electors of the territory proposed to be annexed; a description of the boundaries of the territory or territories to be annexed; a copy of the resolution ordering a general or special election thereof, as the case may be; a copy of the notice of such election; the time and result of the canvass of the votes received in favor of annexation and the number thereof cast against annexation; and that the boundaries of such city or town, by such resolution, shall be extended so as to embrace and include such territory or territories as the same are described in the petition for annexation, which said resolution shall be incorporated in the minutes of said council or legislative body.

(2) A resolution adopted pursuant to 7-2-4601(3) must include a statement that a petition has been filed with the governing body containing the signatures of more than 50% of the resident freeholder electors of the territory to be annexed; a description of the boundaries of the territory to be annexed; and a statement that the boundaries of the municipality are to be extended to include the territory described in the petition for annexation. The resolution shall be incorporated in the minutes of the governing body. Upon incorporation in the minutes, the resolution must be filed and becomes effective as provided in 7-2-4607.

History: **(1)En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(3); (2)En. Sec. 1, Ch. 641, L. 1979.**

Compiler's Comments

Commissioner correction. The term "The resolution" which originally appeared in subsection (2) was changed to "A resolution adopted pursuant to 7-2-4601(3)" by the Code Commissioner, 1979, because of rearrangement of sec. 1, Ch. 641, L. 1979, during codification.

7-2-4607. Filing of resolution. (1) The clerk or other officer performing the duties of clerk of such council or legislative body shall promptly make and certify under the seal of said municipal corporation a copy of said record so entered upon said minutes, which document shall be filed with the clerk of the county in which the city or town to which said territory or territories are sought to be annexed is situated.

(2) From and after the date of the filing of said document in the office of the county clerk, the annexation of such territory or territories so proposed to be annexed shall be deemed and shall be complete. Thenceforth such annexed territory or territories shall be, to all intents and purposes, a part of said municipal corporation, and the said city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: **En. Sec. 2, Ch. 168, L. 1945; R.C.M. 1947, 11-507(4).**

7-2-4608. Restrictions on annexation power. (1) No territory which, at the time such petition for such proposed annexation is presented to such council or legislative body, forms any part of any incorporated city or town shall be annexed under the provisions of this part.

(2) No parcel of land which, at the time such petition for such proposed annexation is presented to such council or legislative body, is used in whole

or in part for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident thereto shall be annexed under the provisions of this part.

History: **En. Secs. 3, 4, Ch. 168, L. 1945; R.C.M. 1947, 11-508, 11-509.**

7-2-4609. Applicability of part. (1) This part does not repeal parts 43 and 45 having reference to extension of the corporate limits of cities of the first, second, and third classes to include contiguous land but provides an alternative method for the annexation of territory or territories to municipal corporations.

(2) When any proceedings for annexation of territory or territories to any municipal corporation are commenced under this part, the provisions of this part and no other apply to such proceedings.

(3) When the proceedings for annexation of territory to a municipality are instituted as provided in this part, the provisions of this part and no other apply, except where otherwise explicitly indicated.

History: **En. Sec. 5, Ch. 168, L. 1945; R.C.M. 1947, 11-510; amd. Sec. 18, Ch. 250, L. 1979; amd. Sec. 2, Ch. 641, L. 1979; (3)En. Sec. 3, Ch. 642, L. 1979.**

Compiler's Comments

Composite section. This section was amended by Ch. 250, Ch. 641, and Ch. 642, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 250 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language in subsection (1) between Ch. 250 and Ch. 641 has been resolved in favor of the language used in Ch. 641.

Codification. Sec. 4, Ch. 642, L. 1979, provided: "Section 3 is intended to be codified as five separate sections, each of which is to be an integral part of parts 42, 43, 44, 45, and 46 respectively, of Title 7, chapter 2; and the provisions contained in Title 7, chapter 2, parts 42, 43, 44, 45, or 46 apply respectively to section 3 as so codified." Section 3 is codified as 7-2-4204, 7-2-4304, 7-2-4409, 7-2-4505, and 7-2-4609(2).

7-2-4610. Provision of services. In all cases of annexation under current Montana law, services will be provided as specified in Title 7, chapter 2, part 47, except where mutually agreed upon by the municipality and the freeholders of the area to be annexed.

History: **En. Sec. 2, Ch. 642, L. 1979.**

Part 47

Annexation With the Provision of Services

7-2-4701. Short title. This part shall be entitled "The Planned Community Development Act of 1973".

History: **En. 11-514 by Sec. 1, Ch. 364, L. 1974; R.C.M. 1947, 11-514.**

7-2-4702. Findings. (1) It is declared as a matter of state policy that current annexation laws and planning methods incorporated in the Montana system are in many cases discriminatory and are in many of the Montana cities causing indiscriminate growth patterns and in many cases forcing citizens of municipalities to be annexed without provision for adequate city services extended and provided for them.

(2) Likewise, in many cities city government is annexing and adding to cities not to the benefit of those being annexed, but to the benefit of the city, merely to derive a greater tax base.

(3) Likewise, in many cities there are those lying on the perimeter of the city not within the corporate boundaries of a city that are deriving many benefits from the city without paying their just and equal share for these services.

History: **En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).**

7-2-4703. Purpose. It is the purpose of this part to develop a just and equitable system of adding to and increasing city boundaries for the state of Montana, which will develop the following firm policies:

(1) Sound urban development is essential to the continued economic development of this state, and any annexation prepared must be well planned in advance.

(2) Municipalities are created to provide the governmental services essential for sound urban development and for the protection of health, safety, and welfare in areas being intensively used for residential, commercial, industrial, institutional, and governmental purposes or in areas undergoing such development, and future annexations must consider these principles.

(3) Municipal boundaries should be extended in accordance with legislative standards applicable throughout the state to include such areas and to provide the high quality of governmental services needed for the public health, safety, and welfare.

(4) Areas annexed to municipalities in accordance with such uniform legislative standards should receive the services provided by the annexing municipality as soon as possible following annexation.

History: **En. 11-515 by Sec. 2, Ch. 364, L. 1974; R.C.M. 1947, 11-515(part).**

7-2-4704. Definitions. The following terms where used in this part have the following meanings except where the context clearly indicates a different meaning:

(1) "Contiguous" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, lands owned by the city or some other political subdivision, or lands owned by the state.

(2) "Municipality" means any city or town under Montana law.

(3) "Resident freeholder" means a person who maintains his residence on real property in which he holds an estate of life or inheritance or of which he is the purchaser of such an estate under a contract for deed, some memorandum of which has been filed in the office of the county clerk and recorder.

History: **En. 11-516 by Sec. 3, Ch. 364, L. 1974; R.C.M. 1947, 11-516.**

7-2-4705. Annexation by municipalities providing services. (1) The governing body of any municipality may extend the corporate limits of such municipality under the procedure set forth in this part upon the initiation of the procedure by the governing body itself.

(2) Whenever the resident freeholders situated outside the corporate boundaries of any municipality, but contiguous thereto, desire to have real estate annexed to the municipality, they may file with the governing body of

the municipality a petition bearing the signatures of 51% of the resident freeholders in the territory sought to be annexed, requesting a resolution stating the intent of the municipality to consider annexation. Upon passage of the resolution, the governing body shall follow the procedure in 7-2-4707 through 7-2-4713 and 7-2-4731(2).

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part); amd. Sec. 19, Ch. 250, L. 1979.

7-2-4706. Appeal if municipal governing body fails to act on petition. If the municipal governing body fails to act within 60 days, the petitioners may appeal to the district court under the procedure set down in 7-2-4741 through 7-2-4746.

History: En. 11-517 by Sec. 4, Ch. 364, L. 1974; R.C.M. 1947, 11-517(part).

7-2-4707. Resolution of intention to annex. The governing body of any municipality desiring to annex territory under the provisions of this part shall first pass a resolution stating the intent of the municipality to consider annexation. Such resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation, the date for such public hearing to be not less than 30 days and not more than 60 days following passage of the resolution.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(1).

7-2-4708. Notice of hearing. (1) The notice of public hearing shall:

(a) fix the date, hour, and place of the public hearing;

(b) describe clearly the boundaries of the area under consideration;

(c) state that the report required in 7-2-4731 will be available in the office of the municipal official designated by the governing body at least 14 days prior to the date of the public hearing.

(2) Such notice will be given by publication in a newspaper having general circulation in the municipality once a week for at least 4 successive weeks prior to the date of the hearing. The date of the last publication shall not be more than 7 days preceding the date of the public hearing. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public hearing.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(2).

7-2-4709. Hearing on question of annexation. (1) At the public hearing, a representative of the municipality as designated by the governing body shall first make an explanation of the report required in 7-2-4731.

(2) Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(4).

7-2-4710. Protest. (1) For a period of 20 days after the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body of the municipality shall receive expressions, in writing, of approval or disapproval of the proposed annexation from resident freeholders of the territory proposed to be annexed.

(2) If a majority of the said resident freeholders in writing disapprove the proposed annexation, no further proceedings under this part shall be had relating to the territory proposed to be annexed or any part thereof for a period of 1 year from the date of such disapproval.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(8).

7-2-4711. Ordinance of annexation. The municipal governing body shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by 7-2-4731 and to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of 7-2-4731 through 7-2-4733. At any regular or special meeting held no sooner than 7 days and no later than 60 days following such public hearing, the governing body shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all or such part of the area described in the notice of public hearing which meets the requirements of 7-2-4734 and 7-2-4735 and which the governing body has concluded should be annexed.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4712. Contents of ordinance of annexation. (1) The ordinance shall:

(a) contain specific findings showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(b) contain a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by 7-2-4731; and

(c) fix the effective date of annexation.

(2) The external boundaries of the area to be annexed shall be described by metes and bounds.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4713. Effective date of annexation. The effective date of annexation may be fixed for any date within 12 months from the date of passage of the ordinance.

History: En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(part).

7-2-4714. Filing of annexation order. (1) The clerk or other officer performing the duties of the clerk of the governing body of a municipality shall promptly make and certify under the seal of the municipal corporation a copy of the record so entered upon the minutes, which document shall be filed with the clerk of the county in which the municipality to which the territory or territories are sought to be annexed is situated.

(2) From and after the date of filing the document in the office of the county clerk or the effective date of the ordinance, whichever is later, the annexation of the territory or territories shall be complete. Thenceforth such annexed territory or territories shall be a part of the municipal corporation and the city or town to which the annexation is made has the power to pass all necessary ordinances pertaining thereto.

History: En. 11-521 by Sec. 8, Ch. 364, L. 1974; R.C.M. 1947, 11-521.

7-2-4715. Simultaneous proceedings for several areas. If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this part for the annexation of such areas.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(7).**

7-2-4716. Effect of annexation. (1) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(2) The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of annexation. Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

History: **En. 11-520 by Sec. 7, Ch. 364, L. 1974; R.C.M. 1947, 11-520(6).**

7-2-4717. Certain expenditures authorized. (1) Municipalities initiating annexations under the provisions of this part are authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study or annexation of unincorporated territory adjacent to the municipality.

(2) In addition, following final passage of the annexation ordinance, the annexing municipality shall have authority to proceed with expenditures for construction of streets, utility lines, and other capital facilities in the annexed area.

History: **En. 11-524 by Sec. 11, Ch. 364, L. 1974; R.C.M. 1947, 11-524.**

7-2-4718. Construction. The method of annexation authorized in this part is independent from other methods of annexation authorized by state law.

History: **En. 11-525 by Sec. 12, Ch. 364, L. 1974; R.C.M. 1947, 11-525(part); amd. Sec. 1, Ch. 642, L. 1979.**

7-2-4719 through 7-2-4730 reserved.

7-2-4731. Plans and report on extension of services required. (1) A municipality exercising authority under this part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in 7-2-4707 through 7-2-4709, prepare a report setting forth its plans to provide services to such area. This report shall include:

(a) a map or maps of the municipality and adjacent territory to show the following information:

(i) the present and proposed boundaries of the municipality;

(ii) the present streets, major trunk water mains, sewer interceptors and outfalls, and other utility lines and the proposed extension of such streets and utility lines as required in subsection (1)(c); and

(iii) the general land-use pattern in the areas to be annexed;

(b) a statement showing that the area to be annexed meets the requirements of 7-2-4734 and 7-2-4735;

(c) a statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(2) At least 14 days before the date of the public hearing provided for in 7-2-4707 through 7-2-4709, the governing body shall approve the report and shall make it available to the public at the office of the municipal official designated by the governing body. In addition, the municipality may prepare a summary of the full report for public distribution.

History: (1)En. 11-518 by Sec. 5, Ch. 364, L. 1974; Sec. 11-518, R.C.M. 1947; (2)En. 11-520 by Sec. 7, Ch. 364, L. 1974; Sec. 11-520, R.C.M. 1947; R.C.M. 1947, 11-518(part), 11-520(3).

7-2-4732. Contents of plan for extension of services. (1) Specifically, the plans for the extension of services shall provide a long-range plan for extension of services and the acquisition of properties outside the corporate limits. This plan must show anticipated development a minimum of 5 years into the future, showing on a yearly basis how the municipality plans to extend services, develop and add sections to the city.

(2) The plans shall:

(a) provide for extending police protection, fire protection, garbage collection, and streets and street maintenance services to the area to be annexed on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation;

(b) provide for future extension of streets and of major trunk water mains, sewer outfall lines, and other utility services into the area to be annexed, so that when such streets and utility lines become necessary and are constructed, property owners in the area to be annexed will be able to secure such services, according to the policies in effect in such municipality for extending such services to individual lots or subdivisions;

(c) if extension of streets and water, sewer, or other utility lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such streets and utility lines.

(3) A method must be set forth by which the municipality plans to finance extension of services into the area to be annexed. If the area is serviced currently by adequate water and sewage services, streets, curbs, and gutters and no capital improvements are needed to provide adequate services stipulated by this section and 7-2-4731, the municipality must provide the area to be annexed with a plan of how they plan to finance other services to be included within the district—mainly, police protection, fire protection, garbage collection, street, and street maintenance services, as well as continued utility service.

(4) In this annexation plan, it must be clearly stated that the entire municipality tends to share the tax burden for these services, and if so, the area may be annexed without a bond issue under the provisions of this part.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part).

7-2-4733. Vote required on proposed capital improvements. Included within the plan must be methodology whereby the area to be annexed may vote upon any proposed capital improvements. Should a negative vote be cast by over 50% of the residents in the section or sections to be annexed in such election, the area may not be annexed.

History: En. 11-518 by Sec. 5, Ch. 364, L. 1974; R.C.M. 1947, 11-518(part); amd. Sec. 20, Ch. 250, L. 1979.

7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area which meets the following standards:

(1) It must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) It must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of such attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(1), (2).

7-2-4735. Guidelines for new boundaries of municipality. In fixing new municipal boundaries, a municipal governing body shall:

(1) wherever practical, use natural topographic features such as ridgelines, streams, and creeks as boundaries; and

(2) if a street is used as a boundary, include within the municipality land on both sides of the street, with such outside boundary not extending more than 200 feet beyond the right-of-way of the street.

History: En. 11-519 by Sec. 6, Ch. 364, L. 1974; amd. Sec. 1, Ch. 81, L. 1977; R.C.M. 1947, 11-519(3).

7-2-4736. Preservation of existing garbage or solid waste service in the event of annexation. A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to the area for 5 years following annexation except upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area, and after the expiration of 5 years, the municipality may provide such service only if a majority of the residents of the annexed or incorporated area request in writing to the municipality that such service be provided by the municipality. If a proper showing is made that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area or if a majority of the residents request service from the municipality, the municipality may assume sole jurisdiction for garbage and solid waste disposal service to the entire annexed or incorporated area.

History: En. 11-526 by Sec. 1, Ch. 131, L. 1977; R.C.M. 1947, 11-526; amd. Sec. 1, Ch. 434, L. 1979.

7-2-4737 through 7-2-4740 reserved.

7-2-4741. Right to court review when area annexed. (1) Within 30 days following the passage of an annexation ordinance under authority of this part, either a majority of the resident freeholders in the territory or the owners of more than 75% in assessed valuation of the real estate in the territory who believe that they will suffer material injury by reason of the failure of the municipal governing body to comply with the procedure set forth in this part or to meet the requirements set forth in 7-2-4734 and 7-2-4735, as they apply to their property, may file a petition in the district court of the district in which the municipality is located seeking review of the action of the governing board and serve a copy of the petition on the municipality in the manner of service of civil process.

(2) If two or more petitions for review are submitted to the court, the court may consolidate all such petitions for review at a single hearing.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(1), (2).

7-2-4742. Court review and decision when area annexed. (1) The review authorized under 7-2-4741 shall be conducted by the court without a jury. The court may hear oral arguments and receive written briefs and may take evidence intended to show that either:

(a) the statutory procedure was not followed; or

(b) the provisions of 7-2-4731 through 7-2-4735 were not met.

(2) The court may affirm the action of the governing body without change, or it may:

(a) remand the ordinance to the municipal governing body for further proceedings if procedural irregularities are found to have materially prejudiced the substantive rights of any of the petitioners;

(b) remand the ordinance to the municipal governing body for amendment of the boundaries to conform to the provisions of 7-2-4734 and 7-2-4735, but the court cannot remand the ordinance to the municipal governing body with directions to add an area to the municipality which was not included in the notice of public hearing and not provided for in plans for service; or

(c) remand the report to the municipal governing body for amendment of the plans for providing services to the end that the provisions of 7-2-4731 through 7-2-4733 are satisfied.

(3) If any municipality fails to take action in accordance with the court's instructions upon remand within 3 months from receipt of such instructions, the court may in its discretion extend the time for compliance.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(3).

7-2-4743. Presumption that municipal actions lawful. All decisions and findings of the governing body of the municipality shall be presumed to be reasonable and lawful until and unless they are modified or set aside by the governing body or upon review.

History: En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(5).

7-2-4744. Appeal from district court. Any party to the review proceedings, authorized under 7-2-4741 including the municipality, may appeal to the Montana supreme court from the final judgment of the district court under rules of procedure applicable in other civil cases. The appealing party may apply to the lower court for a stay in its final determination or a stay of the annexation ordinance, whichever shall be appropriate, pending the outcome of the appeal to the higher court. The lower court may, with the agreement of the municipality, permit annexation to be effective with respect to any part of the area concerning which no appeal is being made.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).**

7-2-4745. Effect of appeal on effective date of annexation. If part or all of the area annexed under the terms of an annexation ordinance is the subject of an appeal to the lower or higher court on the effective date of the ordinance, then the ordinance shall be deemed amended to make the effective date with respect to such area the date of the final judgment of the lower or higher court, whichever is appropriate, or the date the municipal governing board completes action to make the ordinance conform to the court's instructions in the event of remand.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(part).**

7-2-4746. Appeal provisions exclusive. No decisions of the governing body shall be subject to collateral attack, and decisions may be reviewed or modified only in the manner provided in 7-2-4741 through 7-2-4744.

History: **En. 11-522 by Sec. 9, Ch. 364, L. 1974; R.C.M. 1947, 11-522(6).**

7-2-4747 through 7-2-4750 reserved.

7-2-4751. Right to court review when area not annexed. (1) After the resident freeholders have properly petitioned the governing body of the municipality and the body has failed to pass a resolution of intent to annex within 60 days, the petitioners may file a complaint and a duplicate copy of the petition in the district court of the proper jurisdiction stating the reason why the proposed annexation should take place.

(2) The municipality shall be designated party defendant in the cause and shall be required to appear and answer as in other cases.

History: **En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).**

7-2-4752. Court review and decision when area not annexed. (1) The court, without a jury, shall hear and determine the questions presented in the petition.

(2) The court shall order the proposed annexation to take place, notwithstanding the provisions of any other law of this state, if the evidence establishes that:

(a) essential municipal services and facilities are not available to the inhabitants of such territory;

(b) the municipality is physically and financially able to provide municipal services to the area sought to be annexed; and

(c) at least one-eighth of the aggregate external boundaries of the territory sought to be annexed is contiguous to the boundaries of the municipality.

(3) If, however, the evidence does not establish all three of the foregoing factors, the court shall deny the petition to annex and dismiss the proceeding.

History: **En. 11-523 by Sec. 10, Ch. 364, L. 1974; R.C.M. 1947, 11-523(part).**

Part 48

Exclusion of Land

7-2-4801. Use of terms contiguous and adjacent. For the purposes of this part, the words "contiguous" and "adjacent" shall include property on the opposite side of a street or alley from the property sought to be withdrawn.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4802. Exclusion of land from municipalities. The boundaries of any incorporated city or town of this state may be altered and a portion of the territory thereof excluded therefrom, and the councils of such cities and towns are hereby granted power to enact resolutions for that purpose after proceedings had as required in this part.

History: **En. Sec. 1, Ch. 33, L. 1927; re-en. Sec. 4979.1, R.C.M. 1935; R.C.M. 1947, 11-501.**

7-2-4803. Petition to exclude land. (1) A petition in writing, signed by a number of the qualified electors residing within the corporate limits of such city or town equal to a majority of the votes cast at the last city election held therein or by the owners of not less than three-fourths in value of the territory sought to be excluded, shall be filed with the clerk of such city or town.

(2) Such petition shall be presented to the council of such city or town at the next regular meeting after the filing thereof.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4804. Contents of petition. (1) Such petition shall set out and describe the territory to be excluded from the corporate limits, which territory must be on the border of such city or town, and the alteration of the boundaries desired by the petitioners, together with the boundaries of the city or town as it will exist after such change is made. Said petition shall also describe the streets, avenues, alleys, and public places, if any, in the territory sought to be excluded and shall distinctly specify which of said streets, avenues, alleys, or public places are to be retained for the use of the public after the territory has been excluded from the corporate limits of such city or town.

(2) Such petition shall pray that the council of such city or town shall enact a resolution altering the boundaries of such city or town and excluding therefrom the territory therein described.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4805. Resolution of intent to exclude land — notice. If said council by resolution, duly and regularly passed and adopted, shall find that said petition is signed by the requisite number of qualified electors of said city or town or by the owners of not less than three-fourths in value of the territory to be excluded, that the territory petitioned to be excluded is within the corporate limits and on the border thereof, and that the granting of said petition will be to the best interest of such city or town and the inhabitants thereof and will not materially mar the symmetry of such city or town, the city or town clerk of such city or town shall forthwith cause a notice to be published in the newspaper nearest such territory petitioned to be excluded, at least once a week for 2 successive weeks.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4806. Contents of notice — protest period. The notice shall be to the effect that:

(1) such resolution has been duly and regularly passed; and

(2) for a period of 20 days after the first publication of such notice, such city or town clerk will receive from the owners of the territory proposed to be excluded expressions of approval or disapproval, in writing, of the proposed alterations of the boundaries of such city or town by the exclusion of the territory petitioned to be excluded.

History: **En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; R.C.M. 1947, 11-502(part).**

7-2-4807. Hearing on question of exclusion — resolution of exclusion. (1) The clerk shall, at the next regular meeting of the city or town council after expiration of the 20 days, lay before the same all communications in writing so received by him for its consideration, and if after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town shall be altered so as to exclude the territory described in said petition. Said resolution shall also describe the streets, avenues, alleys, and public places in said excluded territory which are to be vacated and abandoned.

(2) Said resolution shall become effective 30 days after its passage and approval, and thereafter the boundary of said city or town shall be as set forth in said resolution.

(3) Such resolution shall not be finally adopted by such council after written disapproval by a majority of the owners in value of the territory proposed to be excluded or after written disapproval or protest by a majority of the owners in value of property within the corporate limits of said city or town immediately adjacent and contiguous to the territory sought to be excluded.

History: **(1), (3)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; (2)En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).**

7-2-4808. Resolution and revised municipal map to be filed. (1) Within 30 days after the passage and approval of said resolution, a copy thereof, duly certified by the clerk of said city or town, together with a map showing the corporate limits of said city or town as altered and changed, shall be filed in the office of the county clerk and recorder of the county in which said city or town is located.

(2) Upon the filing of the certified copy of the resolution, all such streets, avenues, alleys, and public places to be abandoned or vacated, unless expressly excepted in said resolution, shall be deemed to be vacated and abandoned and the title thereto shall revert to the owners of the adjacent property.

History: (1) En. Sec. 3, Ch. 33, L. 1927; re-en. Sec. 4979.3, R.C.M. 1935; Sec. 11-503, R.C.M. 1947; (2)En. Sec. 2, Ch. 33, L. 1927; amd. Sec. 2, Ch. 130, L. 1935; re-en. Sec. 4979.2, R.C.M. 1935; Sec. 11-502, R.C.M. 1947; R.C.M. 1947, 11-502(part), 11-503(part).

7-2-4809. Liability of excluded territory for existing indebtedness. Such alteration shall not relieve any territory excluded from the limits of a city or town from its liability on account of any outstanding bonded indebtedness of such city or town or any indebtedness of any improvement district of which the excluded territory is a part, existing at the time of the passage of such resolution.

History: En. Sec. 4, Ch. 33, L. 1927; re-en. Sec. 4979.4, R.C.M. 1935; R.C.M. 1947, 11-504.

7-2-4810. Jurisdiction of municipality to levy tax to pay existing indebtedness. For the purpose of levying any tax or assessment necessary for the collection of any of the indebtedness specified in 7-2-4809, the territory so excluded shall be and remain under the jurisdiction of such city or town.

History: En. Sec. 5, Ch. 33, L. 1927; re-en. Sec. 4979.5, R.C.M. 1935; R.C.M. 1947, 11-505.

Part 49

Disincorporation of Municipalities

7-2-4901. Automatic disincorporation. (1) If the governing body of any city or town incorporated under the laws of Montana ceases to exist or fails to function for a period of 2 years, the city or town shall be disincorporated in the manner set forth in this part.

(2) (a) In cases where a city or town has been disincorporated by virtue of the provisions of subsection (1), the county commissioners shall file in their office an order that the disincorporation be granted. This order takes effect within 60 days following the date of the order.

(b) A certified copy of the order shall be sent to the state officials named in 7-2-4906.

History: (1)En. Sec. 1, Ch. 99, L. 1973; Sec. 11-308, R.C.M. 1947; (2)En. Sec. 7, Ch. 99, L. 1973; Sec. 11-314, R.C.M. 1947; R.C.M. 1947, 11-308, 11-314.

7-2-4902. Disincorporation by election. (1) Any city or town may be disincorporated in the manner hereafter provided.

(2) If the registered electors of a city or town equal in number to 20% of the number of electors voting at the last regular municipal election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, the board shall order, within 60 days, that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election shall be not less than 60 days or more than 120 days after the board orders the election.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(1), (2); amd. Sec. 296, Ch. 571, L. 1979.

7-2-4903. Notice of election on question of disincorporation. Notice of the election provided for in 7-2-4902 shall be published as provided in 13-1-108.

History: En. Sec. 2, Ch. 99, L. 1973; R.C.M. 1947, 11-309(3); amd. Sec. 297, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-2-4904. Details of election on disincorporation. (1) The election shall be conducted in the same manner as a regular city or town election. The election returns shall be made and canvassed in the same manner as are general election returns.

(2) The form of the ballot shall be:

☐ FOR the disincorporation of .... (insert name of city or town)

☐ AGAINST the disincorporation of .... (insert name of city or town).

History: (1)En. Sec. 4, Ch. 99, L. 1973; Sec. 11-311, R.C.M. 1947; (2)En. Sec. 3, Ch. 99, L. 1973; Sec. 11-310, R.C.M. 1947; R.C.M. 1947, 11-310, 11-311; amd. Sec. 298, Ch. 571, L. 1979.

7-2-4905. Effect of insufficient vote to disincorporate. If it is found by the canvass of the votes that less than 60% of the votes cast were in favor of disincorporation, the county commissioners shall declare the petition for disincorporation denied, in which case no other election may be held on the question of disincorporating said city or town until after the expiration of 2 years from the date of the election.

History: En. Sec. 5, Ch. 99, L. 1973; R.C.M. 1947, 11-312.

7-2-4906. Effect of sufficient vote to disincorporate. (1) In case the canvass reveals that 60% or more of all the votes cast were in favor of disincorporation, the county commissioners shall, under their hands, make and file in their office and cause to be entered upon their proceedings an order that the petition for disincorporation be granted and declaring that the city or town is disincorporated. The order takes effect within 60 days following the date of the order.

(2) A certified copy of the order shall be sent to the secretary of state and the head of the department of community affairs.

History: En. Sec. 6, Ch. 99, L. 1973; amd. Sec. 9, Ch. 213, L. 1975; R.C.M. 1947, 11-313.

7-2-4907 through 7-2-4910 reserved.

7-2-4911. Certification of financial condition. (1) Upon receiving a certified copy of the order of disincorporation, the director of the department of community affairs shall certify a current statement of the financial condition of the disincorporating city or town to the board of county commissioners.

(2) The statement shall include but not be limited to:

(a) a determination of all assets of the city or town, including any current or delinquent utility accounts and/or taxes receivable; and

(b) a statement of all city or town indebtedness, including any revenue or general obligation bonds, special improvement district obligations outstanding, contracts payable, all other obligations of the city, and a schedule for the repayment of indebtedness.

History: **En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part).**

7-2-4912. Management of unencumbered cash. (1) Under the supervision of the director of the department of community affairs or his agent, the city treasurer or town clerk shall draw a treasurer's check for the amount of unencumbered cash in the city or town treasury. The check shall be made payable to and delivered to the county treasurer of the county in which the disincorporating city or town is situated.

(2) The county treasurer shall immediately place said money in a special fund, to be drawn upon as provided in this part.

History: **En. Sec. 8, Ch. 99, L. 1973; amd. Sec. 10, Ch. 213, L. 1975; R.C.M. 1947, 11-315(part).**

7-2-4913. Release of public property to county commissioners. Except as provided in 7-2-4914, upon the disincorporation of a city or town, every public officer of the city shall immediately turn over all public property of every nature and description in his possession to the board of county commissioners of the county in which the city or town is situated.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4914. Disposition of city court records. Notwithstanding the provisions of 7-2-4913, all court records of the city court, if any, shall be transferred to the nearest justice of the peace. The justice of the peace has the authority to execute and complete all unfinished business. All reports and remittances of fines and forfeitures are made in the same manner as that prescribed for justices of the peace.

History: **En. Sec. 9, Ch. 99, L. 1973; R.C.M. 1947, 11-316(part).**

7-2-4915. Effect of disincorporation on prior legal rights. The disincorporation of a city or town does not invalidate or affect any right, penalty, or forfeiture accruing to the city or town or invalidate or affect any contract entered into or imposed upon the corporation, but all the contracted indebtedness and obligations remain unimpaired by reason of the disincorporation of the city or town.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4916. Payment of debts and collection of receivables of disincorporated municipality. (1) The board of county commissioners of the county succeeding the disincorporated city or town shall provide for:

(a) the payment and discharge in good faith of all the indebtedness and obligations according to the tenor of the contract or indenture agreement by which they were contracted or the indebtedness incurred; and

(b) the collection of any indebtedness due the city or town.

(2) All instruments for the repayment of indebtedness are drawn by order of the board on the fund provided in 7-2-4912.

History: **En. Sec. 10, Ch. 99, L. 1973; R.C.M. 1947, 11-317(part).**

7-2-4917. Procedure to collect receivables. (1) The board of county commissioners shall make provisions for the collection of the amounts due a corporation and for the closing up of its affairs, and any act or acts necessary for that purpose and not otherwise provided shall, upon order of the board, be performed by the officer or officers performing similar duties for the county as if it had been performed by the proper officer of the city or town before disincorporation.

(2) The county shall succeed to and possess all rights of the corporation to indebtedness and has power to sue for or otherwise collect any debts in the name of the county.

History: En. Sec. 13, Ch. 99, L. 1973; R.C.M. 1947, 11-320.

7-2-4918. Tax levy in the event of insolvency. (1) If, at any time after the disincorporation of a city or town, it is found that there is not sufficient money in the treasury to the credit of the special fund of 7-2-4912 with which to pay any indebtedness of the corporation, the board of county commissioners has the power and it is its duty to levy and collect from the territory formerly included within the city or town a tax or taxes sufficient in amount to pay the indebtedness of the corporation as the same shall become due.

(2) The tax or taxes, assessments, and collections shall be made in the same manner and at the same time that other taxes of the county are levied and collected and are an additional tax upon the property included within said territory or portions thereof for the payment of said debts.

(3) All money paid into the county treasury under the provisions of this part shall be placed to the credit of the special fund.

History: En. Sec. 11, Ch. 99, L. 1973; R.C.M. 1947, 11-318.

7-2-4919. Management of surplus assets deposited to special fund. If, after payment of the debts of the corporation and the liquidation, where possible, of tangible assets, any surplus shall remain in the hands of the county treasurer to the credit of the special fund, money remaining shall be transferred to the county general fund. Nothing in this section is intended to conflict with the provisions of 7-2-4915 and 7-2-4916.

History: En. Sec. 12, Ch. 99, L. 1973; R.C.M. 1947, 11-319.

7-2-4920. Payment of costs and expenses from special county fund. All costs and expenses of ascertaining information and all other costs and expenses incurred by the board of county commissioners in the execution of the powers and duties of managing the affairs of the disincorporated city or town provided for in this part shall be paid out of the special fund in the county treasury.

History: En. Sec. 14, Ch. 99, L. 1973; R.C.M. 1947, 11-321.

CHAPTER 3

ALTERNATIVE FORMS OF LOCAL GOVERNMENT

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7-3-4434. Purchase and sale of supplies and property.
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Sections 7-3-4454 through 7-3-4460 reserved.
7-3-4461. Department of law.
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7-3-4463. Department of public welfare.
7-3-4464. Department of public safety.
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Part 1

General Provisions

7-3-101. Compliance with constitution. (1) The purpose of parts 1 through 7 is to comply with Article XI, section 3(1), of the Montana constitution, which provides: "The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question."

(2) Parts 1 through 7 establish the alternative forms of government for cities, towns, counties, and consolidated governments. These parts shall be liberally construed to facilitate the adoption of a form of local government.

History: En. 47A-3-201 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-201; amd. Sec. 1, Ch. 262, L. 1979.

7-3-102. Adoption of alternative form. Each local government in the state shall adopt one of the alternative forms of government provided for in parts 1 through 7, including one of each suboption authorized:

(1) the commission-executive form (which may also be called the council-executive, the council-mayor, or the commission-mayor form);

(2) the commission-manager form (which may also be called the council-manager form);

(3) the commission form;

(4) the commission-chairman form;

(5) the town meeting form; or

(6) the charter form.

History: En. 47A-3-202 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-202.

7-3-103. Amendment of self-government charter or adopted alternative form of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government shall be submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

History: En. 47A-3-209 by Sec. 4, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-209.

7-3-104. Limitation on change in alternative form. The electors of any unit of local government which has adopted a new alternative form of local government may not vote on the question of changing the form of local government until 3 years after the new alternative form of local government becomes effective, but the voters may vote on amendments to the alternative form or service or functional transfers.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).**

7-3-105. Plan of government. The approved plan filed with the secretary of state pursuant to subsection (3)(a) of section 14, Chapter 513, Laws of 1975, shall be the official plan and shall be a public record open to inspection of the public and judicially noticeable by all courts.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(3)(b).**

7-3-106. Effect of change in government. (1) All ordinances in effect at the time the new form of government becomes effective shall continue in effect until repealed or amended in the manner provided by law.

(2) The adoption of a new form of government shall not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: **En. 16-5115.11 by Sec. 14, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.11(part).**

7-3-107 through 7-3-110 reserved.

7-3-111. Statutory basis for elected county official government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the elected county official form of government shall be governed by the following sections:

(a) 7-3-401;
(b) 7-3-402;
(c) 7-3-412(3);
(d) 7-3-413(1);
(e) 7-3-414(1);
(f) 7-3-415(2);
(g) 7-3-416(2);
(h) 7-3-417(2);
(i) 7-3-418;
(j) 7-3-432(1);
(k) 7-3-433(1);
(l) 7-3-434(1);
(m) 7-3-435(1);
(n) 7-3-436(1);
(o) 7-3-437(1);
(p) 7-3-438(1);
(q) 7-3-439(1);
(r) 7-3-440(1);
(s) 7-3-441(1);
(t) 7-3-442(1) if the county has elected an auditor;
(u) 7-3-442(6) if the county has not elected an auditor.

(2) This form has terms of 4 years for all elected officials except commissioners who are elected to 6-year terms. The commission consists of three members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(3).**

7-3-112. Statutory basis for county manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the county manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-303;
(c) 7-3-304;
(d) 7-3-305;
(e) 7-3-312(2);
(f) 7-3-313(1) or (2);
(g) 7-3-314(2);
(h) 7-3-315(1);
(i) 7-3-316(2);
(j) 7-3-317(2);
(k) 7-3-318.

(2) Commissioners are elected to 6-year terms. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(4).**

7-3-113. Statutory basis for municipal council-mayor government. (1) For the purpose of determining the statutory basis of existing units of local government, each unit of local government organized under the general statutes authorizing the municipal council-mayor form of government, which does not adopt a new form, shall be governed after May 2, 1977 by the following sections:

(a) 7-3-201;
(b) 7-3-202(1);
(c) 7-3-203;
(d) 7-3-212(2);
(e) 7-3-213(3);
(f) 7-3-214(2);
(g) 7-3-215(2);
(h) 7-3-216(2);
(i) 7-3-217(1);
(j) 7-3-218(2);
(k) 7-3-219(1);
(l) 7-3-220(1);
(m) 7-3-221(3);
(n) 7-3-222(2);
(o) 7-3-223(2).

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed 20 members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(1).**

7-3-114. Statutory basis for municipal commission-manager government. (1) For the purpose of determining the statutory basis of existing units of local government after May 2, 1977, each unit of local government organized under the general statutes authorizing the municipal commission-manager form of government shall be governed by the following sections:

(a) 7-3-301;
(b) 7-3-302(1);
(c) 7-3-303;
(d) 7-3-304;
(e) 7-3-305;
(f) 7-3-312(3);
(g) 7-3-313(1);
(h) 7-3-314(2);
(i) 7-3-315(2);
(j) 7-3-316(2);
(k) 7-3-317(2);
(l) 7-3-318.

(2) This form has terms of 4 years for all elected officials. The size of the commission shall be established by ordinance, but it may not exceed five members.

History: **En. 16-5115.1 by Sec. 4, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.1(2).**

7-3-115 through 7-3-120 reserved.

7-3-121. Purpose. The purpose of 7-3-121 through 7-3-161 is to provide procedures for alteration of existing forms of local government.

History: **En. Sec. 1, Ch. 675, L. 1979.**

Compiler's Comments

Codification. Sec. 27, Ch. 675, L. 1979, provided: "It is intended that sections 1 through 27 be codified as an integral part of Title 7, chapter 3, part 1, and the provisions of Title 7, chapter 3, apply to sections 1 through 27." This material is codified as 7-3-121 through 7-3-161.

Severability. Sec. 28, Ch. 675, L. 1979, was a severability section.

Commissioner correction. The free joint conference committee report on HB 851 (Ch. 675, L. 1979) deleted a section of the original bill but did not alter the internal references within the bill accordingly. The Code Commissioner, 1979, has corrected these internal references in sections 7-3-125, 7-3-143, 7-3-144, 7-3-145, and 7-3-149.

7-3-122. Definitions. As used in 7-3-121 through 7-3-161, unless the context indicates otherwise, the following definitions apply:

(1) "Authority" means:

(a) a municipal or regional airport authority as provided in Title 67, chapter 11;

(b) a conservancy district as provided in Title 85, chapter 9;

(c) a conservation district as provided in Title 76, chapter 15;

(d) a drainage district as provided in Title 85, chapter 8;

(e) an irrigation district as provided in Title 85, chapter 7;

(f) a hospital district as provided in Title 7, chapter 34, part 21;

(g) a flood control and water conservation district as provided in Title 76, chapter 5, part 11;

(h) a county water and sewer district as provided in Title 7, chapter 13, part 22; or

(i) an urban transportation district as provided in Title 7, chapter 14, part 2.

(2) "Finance administrator" means the individual responsible for the financial administration of the local government and generally means the

county or city treasurer or town clerk unless the alternative form or governing body specifies a different individual.

(3) "Governing body" means the commission or the town meeting legislative body established in the alternative form of a local government under Title 7, chapter 3, parts 1 through 6.

(4) "Local improvement district" means an improvement district in which property is assessed to pay for specific capital improvements benefiting the assessed property.

(5) "Records administrator" means the individual responsible for keeping the public records of the local government and generally means the county, city, or town clerk unless the alternative form or governing body specifies a different individual.

(6) "Subordinate service district" means a special district within a local government in which certain services are provided and in which taxes may be levied to finance the services.

History: En. Sec. 2, Ch. 675, L. 1979.

7-3-123. Alteration of existing forms of local government. An alteration of an existing form of local government may be proposed by a petition of the electors.

History: En. Sec. 3, Ch. 675, L. 1979.

7-3-124. Election procedure. Except as otherwise provided in 7-3-121 through 7-3-161, each election under 7-3-121 through 7-3-161 is conducted in the same manner as an election involving ballot issues or of local officials.

History: En. Sec. 4, Ch. 675, L. 1979.

7-3-125. Petition for alteration. (1) A petition for the alteration of an existing form of local government may be presented to the governing body of the local government. The petition must meet the requirements of 7-3-142 through 7-3-145.

(2) The petition must be signed by at least 15% of the electors of the local government registered at the last general election, and upon receipt of the petition the governing body shall call an election, as provided for in 7-3-149 through 7-3-151, on the proposed alteration. Whenever county-municipal consolidation is proposed, the petition must be signed by at least 15% of the electors residing within the municipality or municipalities proposed to be consolidated and 15% of the electors residing in the remainder of the county.

History: En. Sec. 5, Ch. 675, L. 1979.

7-3-126 through 7-3-140 reserved.

7-3-141. Permissible recommendations. (1) A petition proposing to alter an existing form of county government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 6;

(c) draft a charter;

(d) recommend municipal-county consolidation or amendments to an existing consolidation; or

(e) in cooperation with a similar petition calling for an election on county merger circulated in an adjoining county, recommend county merger.

(2) A petition proposing to alter an existing form of municipal government may:

(a) recommend amendments to the existing plan of government;

(b) recommend any plan of government authorized by Title 7, chapter 3, parts 1 through 7;

(c) draft a charter; or

(d) recommend disincorporation.

History: **En. Sec. 6, Ch. 675, L. 1979.**

7-3-142. Requirements for petition. A petition proposing an alteration of an existing form of local government must contain:

(1) a certificate containing the "plan of government" of the existing form of local government;

(2) a certificate containing the "plan of government" of the proposed new form of local government or amendments to the existing plan;

(3) a certificate containing the "plan of apportionment" of commissioner districts if districts are contained in the "plan of government"; and

(4) a comparison of the existing plan and proposed plan of local government, including, if desired, a statement of the strengths and weaknesses of the existing and proposed plans of local government, information that supports the adoption of the proposed plan, and information that supports retention of the present plan.

History: **En. Sec. 7, Ch. 675, L. 1979.**

7-3-143. Special requirements if consolidation recommended. (1) Whenever county-municipal consolidation is recommended, a petition, in addition to the material required in 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of the local governments consolidated under its proposal;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and nonconsolidated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

(3) Whenever amendments to an existing consolidation plan are recommended, a petition must contain a certificate containing amendments to the consolidation plan.

History: **En. Sec. 8, Ch. 675, L. 1979.**

7-3-144. Special requirements if county merger recommended. (1) Whenever county merger is recommended, a petition, in addition to the material required by 7-3-142, must contain a consolidation plan which:

(a) provides for adjustment of existing bonded indebtedness and other obligations in a manner which assures a fair and equitable burden of taxation for debt service;

(b) provides for establishment of subordinate service districts;

(c) provides for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative plan;

(d) provides the official name of the consolidated local government; and

(e) (i) provides for the transfer, reorganization, abolition, adjustment of boundaries, or absorption of existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities; or

(ii) grants the legislative body of the consolidated government the authority to transfer, reorganize, abolish, adjust boundaries, or absorb existing boards, subordinate service districts, local improvement districts, agencies, and political subdivisions of the consolidated governments, excluding school districts, authorities, and incorporated municipalities, with or without referendum requirements.

(2) The consolidation plan may include other provisions that are consistent with state law.

History: **En. Sec. 9, Ch. 675, L. 1979.**

7-3-145. Special requirements if municipal disincorporation recommended. Whenever municipal disincorporation is recommended, a petition, in addition to the material required by 7-3-142, must contain:

(1) a certificate of disincorporation instead of a plan of government; and

(2) a recommended plan of disincorporation.

History: **En. Sec. 10, Ch. 675, L. 1979.**

7-3-146. Filing of petitions. (1) Two copies of a petition shall be filed with the department of community affairs.

(2) One copy of a petition shall be filed with the local government records administrator.

(3) The filings required by this section shall be done within 45 days of submission of the petition.

History: **En. Sec. 11, Ch. 675, L. 1979.**

7-3-147. Availability of petitions. (1) Sufficient copies of a petition proposing alterations to an existing form of local government must be made available to the public for inspection at convenient locations and at reasonable hours to provide all interested persons an opportunity to review the recommendations and documents. The copies must be available no later than

30 days prior to an election on the recommendations if such an election is to be held. The local government may distribute copies of a petition to the electors or residents of the local government.

(2) The cost of preparing the copies needed to meet the requirements of this section shall be borne by the affected local government.

History: **En. Sec. 12, Ch. 675, L. 1979.**

7-3-148. Publication of summary and comparison. (1) A summary of the recommendations contained in a petition proposing alteration of an existing form of local government must be published at least twice in a newspaper of general circulation in the local government. Whenever an election on the recommendations is to be held, publication must be made during the 2 weeks preceding the election.

(2) The summary must contain a description of the recommendations, a comparison of the existing and proposed forms of government, and a list of locations where the full proposal may be seen or obtained.

(3) The cost of publication required by this section shall be borne by the affected local government.

History: **En. Sec. 13, Ch. 675, L. 1979.**

7-3-149. Election on alternative form. (1) The governing body shall call a special election on the question of an alternative form of government to be held within 120 days of the date of filing with the records administrator under 7-3-146. The special election may be held in conjuction with any other election. The records administrator shall prepare and print notices of the special election.

(2) The cost of the election shall be paid for by the local government.

(3) (a) The affirmative vote of a simple majority of those voting on the question is required for adoption.

(b) In any election involving the question of consolidation, each question shall be submitted to the electors in the county and requires an affirmative vote of a simple majority of the votes cast in the county on the question for adoption. There is no requirement for separate majorities in local governments voting on consolidation.

(c) In any election involving the question of county merger, the questions shall be submitted to the electors in the counties affected and requires a majority of the votes cast on the questions in each affected county for adoption.

(d) If the electors disapprove the proposed new form of local government, amendments, or consolidation plan, the local government retains its existing form.

History: **En. Sec. 14, Ch. 675, L. 1979.**

7-3-150. General ballot requirements. (1) The question of adopting an alteration of an existing form of government proposed by petition shall be submitted to the electors in substantially the following form:

Vote for one:

☐ FOR adoption of the (self-government charter, amendment to an existing charter, or plan of government) proposed for (insert name of local government) proposed by petition of the people.

☐ FOR the existing form of government.

(2) The whole number of ballots shall be divided into two equal sets. No more than one set may be used in printing the ballot for use in any one precinct and all ballots furnished for use in one precinct shall be identical. The existing plan of government shall be printed as the first item and the proposed plan as the second item on half of the ballots and the proposed form as the first item and the existing form as the second item on the other half of the ballots. If the local government consists of only one precinct, the existing plan shall be listed first on the ballot.

History: En. Sec. 15, Ch. 675, L. 1979.

7-3-151. Treatment of suboptions for alternative forms. (1) No petition recommendation may involve more than three separate suboptions, and no suboption may contain more than two alternatives. If a suboption is submitted to the voters, only the ballot alternatives within that suboption receiving the highest number of affirmative votes are considered approved and included in the alternative form of government.

(2) A proposed plan shall be submitted to the voters as a single question, except that the suboptions within the alternative plan of local government authorized in Title 7, chapter 3, parts 1 through 7, and the suboptions authorized in a charter may be submitted to the electors as separate questions. The question of adopting a suboption shall be submitted to the electors in substantially the following form:

Vote for one:

A legal officer (who may be called the "county attorney"):

☐ Shall be elected for a term of 4 years.

☐ Shall be appointed for a term of 4 years by the chairman of the local governing body.

History: En. Sec. 16, Ch. 675, L. 1979.

7-3-152. Effect of adoption of new form of government. The adoption of a new plan of government does not affect the validity of any bond, debt, contract, obligation, or cause of action accrued or established under the prior form of government.

History: En. Sec. 17, Ch. 675, L. 1979.

7-3-153. Filing of approved plan. (1) A copy of the existing or proposed plan of government ratified by the voters and any apportionment plan or consolidation or merger plan shall be certified by the chairman of the governing body and filed with the department of community affairs, the county records administrator, and the municipal records administrator if it is a municipal plan.

(2) The approved plan filed with the department of community affairs is the official plan and is a public record open to inspection by the public and judicially noticeable by all courts.

History: En. Sec. 18, Ch. 675, L. 1979.

7-3-154. Judicial review. Judicial review to determine the validity of the procedures whereby any charter or alternative plan of government is adopted may be initiated by petition in district court of 10 or more registered voters of the local government brought within 60 days after the election at which the charter or plan of government, revision, or amendment is approved. If no petition is filed within that period, compliance with all the procedures required by 7-3-121 through 7-3-161 and the validity of the manner in which the charter or plan of government was approved is conclusively presumed. It is presumed that proper procedure was followed and all procedural requirements were met. The adoption of a charter or plan of government may not be considered invalid because of any procedural error or omission unless it is shown that the error or omission materially and substantially affected its adoption.

History: En. Sec. 19, Ch. 675, L. 1979.

7-3-155. Three-year moratorium. Unless the constitution requires otherwise, the electors of any unit of local government which has voted upon the question of changing the form of local government, charter, or consolidation plan or upon the question of amending the alternative form, charter, or consolidation plan may not vote on the question of changing or amending the form of local government for 3 years.

History: En. Sec. 20, Ch. 675, L. 1979.

7-3-156. Effective date of alternative plan or amendment. (1) An alternative plan of local government approved by the electors takes effect when the new officers take office, except as otherwise provided in any charter or consolidation plan. A consolidation or merger plan adopted by the electors takes effect in the same manner.

(2) Provisions creating offices and establishing qualifications for office under any apportionment plan become effective immediately for the purpose of electing officials.

(3) An amendment to an existing plan of government becomes effective at the beginning of the local government's fiscal year commencing after the election results are officially declared.

History: En. Sec. 21, Ch. 675, L. 1979.

7-3-157. General transition provisions. (1) The governing body shall prepare an advisory plan for orderly transition to a new plan of local government. The transition plan may propose necessary ordinances, plans for consolidation of services and functions, and a plan for reorganizing boards, departments, and agencies.

(2) The governing body of a local government may enact and enforce ordinances to bring about an orderly transition to the new plan of government, including transfer of powers, records, documents, properties, assets, funds, liabilities, or personnel. These ordinances are to be consistent with the approved plan and necessary or convenient to place it into full effect. Whenever a question arises concerning transition which is not provided for, the governing body may provide for the transition by ordinance, rule, or resolution not inconsistent with law.

History: En. Sec. 22, Ch. 675, L. 1979.

7-3-158. Transition provisions affecting personnel. (1) The members of the governing body holding office on the date the new plan of government is adopted by the electors of the local government continue in office and in the performance of their duties until the governing body authorized by the plan has been elected and qualified, whereupon the prior governing body is abolished.

(2) All other employees holding offices or positions, whether elective or appointive, under the government of the county or municipality continue in the performance of the duties of their respective offices and positions until provisions are made for the performance or discontinuance of the duties or the discontinuance of the offices or positions.

(3) A charter or a petition or resolution proposing an alteration to an existing form of local government may provide that existing elected officers shall continue in office until the end of the term for which they were elected or may provide that existing elected officers shall be retained as local government employees until the end of the term for which they were elected and their salaries may not be reduced.

History: **En. Sec. 23, Ch. 675, L. 1979.**

7-3-159. Treatment of existing ordinances and resolutions. (1) All ordinances and resolutions in effect at the time the new form of government becomes effective continue in effect until repealed or amended in the manner provided by law.

(2) Within 2 years after ratification of a consolidation plan, the governing body of the consolidated local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county and municipalities at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation remains in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: **En. Sec. 24, Ch. 675, L. 1979.**

7-3-160. Election of new officials. (1) Within 20 days after an election at which the new plan of government is approved by the electors, the governing body of the local government shall meet and order a special primary and general election for the purpose of electing the officials required by the new form of government. The elections for officials may be held in conjunction with any other election.

(2) The order shall specify a date for the primary election not more than 120 days or less than 20 days after the election approving the new form and a date for the general election 60 days after the primary.

History: **En. Sec. 25, Ch. 675, L. 1979.**

7-3-161. Organization of new governing body. (1) The first meeting of a new governing body for a new plan of government shall be held at 10 a.m., 60 days after the election of the new officers. At that time, newly elected members shall take the oath of office prior to assuming the duties of office.

(2) If the terms of the commissioners are to be overlapping, they shall draw lots to establish their respective terms of office.

History: **En. Sec. 26, Ch. 675, L. 1979.**

Part 2

Commission-Executive Government

7-3-201. Commission-executive form. The commission-executive form (which may be called the council-executive, the council-mayor, or the commission-mayor form) consists of an elected commission (which may be referred to as the council) and one elected executive (who may be referred to as the mayor) who is elected at large.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(1).**

7-3-202. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(4).**

7-3-203. Duties of executive. The executive shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform duties required of him by law, ordinance, or resolution;

(3) administer affairs of the local government;

(4) carry out policies established by the commission;

(5) recommend measures to the commission;

(6) report to the commission on the affairs and financial condition of the local government;

(7) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(8) report to the commission as the commission may require;

(9) attend commission meetings and may take part in discussions;

(10) execute the budget adopted by the commission;

(11) appoint, with the consent of the commission, all members of boards; except the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(2).**

7-3-204 through 7-3-210 reserved.

7-3-211. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-212 through 7-3-224.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(part).**

7-3-212. Administrative assistants. The executive:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive; or

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(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the executive.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(a).**

7-3-213. Supervision of personnel. The executive may:

(1) appoint and remove all employees of the local government;

(2) appoint and remove, with the consent of a majority of the commission, all employees of the local government;

(3) appoint, with the consent of a majority of the commission, all department heads and remove department heads and may appoint and remove all other department employees; or

(4) appoint and remove, with the consent of a majority of the commission, all department heads and appoint and remove all other employees of the local government.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(b).**

7-3-214. Veto power. The executive may:

(1) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission;

(2) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(3) sign all ordinances and resolutions with no veto power.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(c).**

7-3-215. Preparation of budget. The executive may:

(1) prepare the budget and present it to the commission for adoption; or

(2) prepare the budget in consultation with the commission and department heads.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(d).**

7-3-216. Administrative supervision and control. The executive may:

(1) exercise control and supervision of the administration of all departments and boards; or

(2) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(e).**

7-3-217. Financial officer. A financial officer (who may be called the treasurer):

(1) shall be elected;

(2) shall be appointed by the executive with the consent of the council;

(3) shall be selected as provided by ordinance; or

(4) may, at the discretion of the commission, be selected as provided by ordinance.

History: **En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(f).**

7-3-218. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(g).

7-3-219. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(h).

7-3-220. Chairman of commission. The commission shall have a chairman who shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance; or

(2) selected as provided by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(i).

7-3-221. Presiding officer of commission. The presiding officer of the commission shall be:

(1) the chairman of the commission, who may vote as other members of the commission;

(2) the executive, who may vote as the commissioners;

(3) the executive, who shall decide all tie votes of the commission but shall have no other vote (the chairman of the commission shall preside if the executive is absent); or

(4) the executive, but he may not vote.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(j).

7-3-222. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(k).

7-3-223. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(l).

7-3-224. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-203 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 1, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-203(3)(m).

Part 3

Commission-Manager Government

7-3-301. Commission-manager form. The commission-manager form (which may be called the council-manager form) consists of an elected commission (which may be called the council) and a manager appointed by the commission, who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(1).

7-3-302. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(7).

7-3-303. Appointment of manager. The manager shall be appointed by the commission for an indefinite term on the basis of merit only and removed only by a majority vote of the whole number of the commission.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(2).

7-3-304. Duties of manager. The manager shall:

(1) enforce laws, ordinances, and resolutions;

(2) perform the duties required of him by law, ordinance, or resolution;

(3) administer the affairs of the local government;

(4) direct, supervise, and administer all departments, agencies, and offices of the local government unit except as otherwise provided by law or ordinance;

(5) carry out policies established by the commission;

(6) prepare the commission agenda;

(7) recommend measures to the commission;

(8) report to the commission on the affairs and financial condition of the local government;

(9) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(10) report to the commission as the commission may require;

(11) attend commission meetings and may take part in the discussion, but he may not vote;

(12) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(13) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance;

(14) appoint members of temporary advisory committees established by the manager.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).**

7-3-305. Employees of commission-manager government. (1) Employees appointed by the manager and his subordinates shall be administratively responsible to the manager.

(2) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(3) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).**

7-3-306 through 7-3-310 reserved.

7-3-311. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-312 through 7-3-318.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(part).**

7-3-312. Appointment to boards. All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(1) the chairman with the consent of the commission; or

(2) the manager with the consent of the commission; or

(3) the commission.

History: **En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(a).**

7-3-313. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(b).

7-3-314. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(c).

7-3-315. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) elected by the qualified electors for a term of office; or

(3) selected as provided by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(d).

7-3-316. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(e).

7-3-317. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(f).

7-3-318. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-204 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 2, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-204(6)(g).

Part 4

Commission Government

7-3-401. Commission form. The commission form consists of an elected commission (which may also be called the council) and other elected officers as provided in this part. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(1).

7-3-402. Nature of government. Local governments that adopt this form shall have general government powers.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(4).

7-3-403. Role of chairman of commission. The chairman of the commission, who may be referred to as the mayor, shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-404 through 7-3-410 reserved.

7-3-411. General structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-412 through 7-3-418.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-412. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(a).

7-3-413. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(b).

7-3-414. Chairman of commission. The chairman of the commission shall be:

(1) elected by the members of the commission from their own number for a term established by ordinance;

(2) selected as provided by ordinance; or

(3) elected directly by the voters for a term established by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-415. Administrative assistants. The commission:

(1) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(2) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(d).

7-3-416. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(e).

7-3-417. Size of commission and community councils. The size of the commission, which shall be a number not less than three, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(f).

7-3-418. Terms of elected officials. The term of office of elected officials may not exceed 4 years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3(2), of the Montana constitution may not exceed 6 years. Terms of office shall be established when the form is adopted by the voters.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(2)(g).

7-3-419 through 7-3-430 reserved.

7-3-431. Additional structural suboptions for county and consolidated governments. In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-432 through 7-3-442. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(part).

7-3-432. Legal officer. A legal officer (who may be called the county attorney):

(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(a).

7-3-433. Law enforcement officer. A law enforcement officer (who may be called the sheriff):

(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(b).

7-3-434. Clerk and recorder. A clerk and recorder:

(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(c).

7-3-435. Clerk of district court. A clerk of district court:

(1) shall be elected;

(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(d).**

7-3-436. Treasurer. A treasurer:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(e).**

7-3-437. Surveyor. A surveyor:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(f).**

7-3-438. Superintendent of schools. A superintendent of schools:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: **En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(g).**

7-3-439. Assessor. An assessor:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;

(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(h).

7-3-440. Coroner. A coroner:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(i).

7-3-441. Public administrator. A public administrator:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(j).

7-3-442. Auditor. An auditor:
(1) shall be elected;
(2) shall be appointed by the local government commission;
(3) shall be appointed by the chairman of the local government commission;
(4) shall be selected as provided by ordinance;
(5) may at the discretion of the commission be selected as provided by ordinance; or
(6) shall not be included in this form as a separate office.

History: En. 47A-3-205 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 3, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-205(3)(k).

Part 5

Commission-Chairman Government

7-3-501. Commission-chairman form. The commission-chairman form consists of an elected commission (which may also be referred to as the council) and a commission chairman (who may also be referred to as mayor or as president) elected by the members of the commission from their own number and serving at the pleasure of the commission.

History: **En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).**

7-3-502. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: **En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(4).**

7-3-503. Role and duties of chairman. The commission chairman shall:

(1) be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government; and

(2) enforce laws, ordinances, and resolutions;

(3) perform duties required of him by law, ordinance, or resolution;

(4) administer the affairs of the local government;

(5) direct, supervise, and administer all departments, agencies, and offices of the local government except as otherwise provided by law or ordinance;

(6) carry out policies established by the commission;

(7) prepare the commission agenda;

(8) recommend measures to the commission;

(9) report to the commission on the affairs and financial condition of the local government;

(10) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(11) report to the commission as the commission may require;

(12) attend commission meetings and may take part in discussions;

(13) execute the budget adopted by the commission;

(14) appoint, with the consent of the commission, all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;

(15) appoint, with the consent of a majority of the commission, all department heads, and the chairman may remove department heads and may appoint and remove all other employees;

(16) prepare the budget and present it to the commission for adoption;

(17) exercise control and supervision over the administration of departments and boards.

History: **En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).**

7-3-504 through 7-3-510 reserved.

7-3-511. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-512 through 7-3-517.

History: **En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(part).**

7-3-512. Selection of commission members. The commission shall be:

(1) elected at large;

(2) elected by districts in which candidates must reside and which are apportioned by population;

(3) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; or

(4) elected by any combination of districts, in which candidates must reside and which are apportioned by population, and at large.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(a).

7-3-513. Type of election. Local government elections shall be conducted on a:

(1) partisan basis as provided in this title; or

(2) nonpartisan basis as provided in this title.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(b).

7-3-514. Administrative assistants. The commission chairman:

(1) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman; or

(2) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government, and such administrative assistants shall be answerable solely to the chairman.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(c).

7-3-515. Terms of commission members. Commission members shall be elected for:

(1) concurrent terms of office; or

(2) overlapping terms of office.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(d).

7-3-516. Size of commission and community councils. The size of the commission, which shall be a number not less than five, shall be established when the form is adopted by the voters, and:

(1) community councils of at least three members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(2) community councils to advise commissioners may be authorized by ordinance.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(e).

7-3-517. Terms of elected officials. The term of office of elected officials may not exceed 4 years and shall be established when the form is adopted by the voters.

History: En. 47A-3-206 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 4, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-206(3)(f).

Part 6

Town Meeting Government

7-3-601. Town meeting form. (1) The town meeting form consists of an assembly of the qualified electors of a town (known as a town meeting), an elected town chairman, who shall be a qualified elector, and an optional elected town meeting moderator.

(2) The town meeting form may be adopted only by incorporated cities or towns of less than 2,000 persons, as determined by the most recent decennial census as conducted by the United States bureau of the census unless a more recent enumeration of inhabitants be made by the state, in which case such enumeration shall be used for the purposes of this part. Any unit of local government which adopts this form may retain it even though its population increases to more than 2,000.

(3) All legislative powers of the town shall vest in the town meeting. The town meeting may enact rules, resolutions, and ordinances.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(1), (2).**

7-3-602. Nature of government. The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(1) general government powers; or

(2) self-government powers.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(11).**

7-3-603. Holding of town meeting. (1) Towns adopting this form shall convene an annual town meeting on the first Tuesday of March. Special town meetings may be called by the town chairman or upon petition of 10% of the qualified electors of the town, but in no case by less than 10 qualified electors.

(2) All qualified electors of the town may attend the town meeting, take part in the discussion, and vote on all matters coming before the town meeting. Others may attend but shall not vote or take part in the discussion except by a majority vote of the town meeting.

(3) A quorum shall consist of at least 10% of the qualified electors of the town, but a higher quorum requirement may be established by a majority vote of the town meeting.

(4) The election of town officials shall be nonpartisan and shall be by a plurality of those qualified electors present and voting. All other voting in the town meeting shall be by a simple majority of those qualified electors present and voting.

(5) Election of officials shall be by secret ballot. Other voting shall be by secret ballot upon the request of at least five members of the town meeting.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(3).**

7-3-604. Meeting agenda. An agenda of the town meeting and a list of all elective and appointive offices to be filled shall be prepared by the town chairman, who shall post notice at least 2 weeks prior to the convening of all annual and special town meetings. Upon written petition of at least

10% of the qualified electors of the town but not less than 10 qualified electors, the town chairman shall insert a particular item or items in the agenda for the next annual or special town meeting. The town meeting agenda may include an item entitled "other business" under which any matter may be considered by the town meeting, except no matter dealing with finance or taxation shall be considered under "other business".

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(4).**

7-3-605. Agenda and conduct of initial town meeting. The first agenda of the first town meeting following the adoption of this form shall be established by the local study commission. At that town meeting the chairman of the local study commisssion shall preside over the election of the presiding officer of the town, after which the presiding officer of the town shall preside.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(10).**

7-3-606. Selection, role, and duties of town chairman. (1) The town meeting shall elect a town chairman for a term of not less than 1 year or more than 2 years. An unexpired term of a town chairman shall be filled at the next annual or special town meeting.

(2) The town chairman shall be the chief executive officer of the town, and he shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the town;

(d) prepare the town meeting agenda;

(e) attend all annual and special town meetings;

(f) recommend measures to the town meeting;

(g) report to the town on the affairs and financial condition of the town;

(h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of the town;

(i) appoint, with the consent of the town meeting, members of all boards and appoint and remove all employees of the town;

(j) prepare the budget and present it to the town meeting for adoption;

(k) exercise control and supervision of the administration of all departments and boards;

(l) carry out policies established by the town meeting.

(3) Compensation of the town chairman shall be established by ordinance but shall not be reduced during the current term of the town chairman.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(5) thru (7).**

7-3-607. Committees. Permanent committees to advise the town chairman and/or the town meeting may be established and dissolved by ordinance. The town chairman may establish temporary committees to advise him.

History: **En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(8).**

7-3-608 through 7-3-610 reserved.

7-3-611. Structural suboptions. The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed in 7-3-612 and 7-3-613.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(part).

7-3-612. Town meeting moderator. The town meeting shall:

(1) elect a town meeting moderator for a term of 1 year, who shall be the presiding officer of all annual and special town meetings but who shall have no other governmental powers; or

(2) designate the town chairman as presiding officer of all annual and special town meetings.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(a).

7-3-613. Adminstrative assistant. (1) The town chairman:

(a) shall appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town; or

(b) may appoint an administrative assistant to assist him in the supervision and operation of the affairs of the town.

(2) The administrative assistant shall be answerable solely to the town chairman, and the town chairman may delegate powers to the administrative assistant at his discretion.

History: En. 47A-3-207 by Sec. 1, Ch. 344, L. 1975; R.C.M. 1947, 47A-3-207(9)(b).

Part 7

Charter Government

7-3-701. Charter form. (1) The purpose of this part is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(1), (2).

7-3-702. Nature of government. A charter form of government shall possess self-government powers.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(3).

7-3-703. Charter required. (1) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(2) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(4), (13).

7-3-704. Legislative body. (1) The charter shall provide for an elected legislative body (called a commission or council) or shall provide for a legislative body comprised of all qualified electors. For elected legislative bodies, the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(2) The charter shall provide for the nomination and election of commissions:

(a) at large;

(b) by districts in which candidates must reside and which are apportioned by population;

(c) by a combination of districts, in which candidates must reside and which are apportioned by population, and at large; or

(d) elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(5), (6).

7-3-705. Officials and personnel. (1) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office (except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote), the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(2) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(7), (9).

7-3-706. Effective date. The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(16).

7-3-707. Other charter provisions. (1) The charter may establish other legislative, administrative, and organizational structures.

(2) The charter may contain prohibitions on the exercise of power by a unit of local government.

(3) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(4) The listing of charter provisions in this part shall not be construed to prevent the inclusion of additional provisions in charters.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(8), (14), (15), (17).

7-3-708. Limitations on charter provisions. (1) Charter provisions may not conflict with the provisions of part 1, chapter 1, which establish statutory limitations on the powers of self-government units.

(2) Charter forms are subject to state laws establishing election, initiative, and referendum procedures; and charters shall not contain provisions establishing election, initiative, and referendum procedures.

(3) The charter shall not contain provisions establishing or modifying local court systems.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(10) thru (12).

7-3-709. Amendment of charter. A charter may be amended only as provided by state law.

History: En. 47A-3-208 by Sec. 1, Ch. 344, L. 1975; amd. Sec. 5, Ch. 351, L. 1977; R.C.M. 1947, 47A-3-208(18).

Parts 8 through 10 reserved

Part 11

City-County Consolidation — Option 1

7-3-1101. City-county consolidation authorized. (1) A county and a city or town within the county may unite to form a single unit of local government under the provisions of this part.

(2) An alternative form of government, including a charter form, for a consolidated unit of government may be submitted to the voters only by those study commissions that have cooperated in the formulation of the plan. A majority vote by each of the affected study commissions is required for the submission of an alternative form of government for a consolidated unit of local government. The affected study commissions submitting a consolidated form shall issue a single joint report and proposal.

(3) An alternative form of government for a consolidated unit of local government does not need to include more than one municipality. A municipality may not be included unless the local government study commission of that municipality participates in the cooperative study and unless its study commission by a majority vote approves the proposed alternative plan for the consolidated government.

(4) This part shall not apply to excluded municipalities, school districts, conservancy districts, drainage districts, irrigation districts, soil and water conservation districts, or livestock districts.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part); amd. Sec. 2, Ch. 262, L. 1979.

7-3-1102. Plan of consolidation. (1) Study commissions proposing consolidation shall prepare, adopt, and submit to the voters a consolidation plan in addition to the alternative form of government. If the commission proposes a charter, the plan may be included in the charter.

(2) The consolidation plan shall:

(a) provide for adjustment of existing bonded indebtedness and other obligations in a manner which will provide for a fair and equitable burden of taxation for debt service;

(b) provide for establishment of service areas;

(c) provide for the transfer or other disposition of property and other rights, claims, assets, and franchises of local governments consolidated under the alternative form;

(d) provide the official name of the consolidated unit of local government;

(e) provide for the transfer, reorganization, abolition, absorption, adjustment of boundaries (and may provide a method for adjusting the boundaries) of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments;

(f) include other provisions which the study commission elects to include and which are consistent with state law.

(3) The plan may grant the legislative body of the consolidated government the authority to transfer, reorganize, adjust boundaries, abolish, or absorb, and provide a method for adjusting the boundaries of such entities with or without referendum requirements.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(part).

7-3-1103. Effect of consolidation. (1) As a political subdivision of the state, such consolidated unit of local government shall have the status of a county and an incorporated municipality for all purposes and shall replace and be the successor of the county and any city or town.

(2) On its effective date, the alternative form of government and consolidation plan operate to dissolve all local governments within the area of consolidation in accordance with their provisions. On the effective date, the separate corporate existence of the county and of each participating city and/or town shall be consolidated and merged into one local government unit under the name selected, designated, and adopted as provided in this chapter. The consolidated local government shall thereupon succeed to, possess, and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns so consolidated and merged.

(3) All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to counties and cities shall remain in full force with respect to a consolidated local government.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(5), (8).

7-3-1104. General powers of consolidated local governments. A consolidated local government shall have and may exercise all powers that are conferred on counties, cities, or towns by the constitution and laws of the state. The consolidated local government may levy all taxes which counties, cities, and towns are authorized to levy.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(6).

7-3-1105. Rules, ordinances, and resolutions of consolidated unit. Within 2 years after ratification of the consolidation, the governing body of the consolidated unit of local government shall revise, repeal, or reaffirm all rules, ordinances, and resolutions in force within the participating county, cities, and towns at the time of consolidation. Each rule, ordinance, or resolution in force at the time of consolidation shall remain in force within the former geographic jurisdiction until superseded by action of the new governing body. Ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments may not be repealed.

History: En. 16-5115.3 by Sec. 6, Ch. 513, L. 1975; R.C.M. 1947, 16-5115.3(7).

Part 12

City-County Consolidation — Option 2

7-3-1201. Authorization for consolidated city-county government. The separate corporate existence and government of any county and of each and every city and town therein may be abandoned and terminated and such county and each and all of the cities and towns therein may be consolidated and merged into one municipal corporation and government under this part and part 13 by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 121, L. 1923; re-en. Sec. 5520.1, R.C.M. 1935; R.C.M. 1947, 11-3401.

7-3-1202. Nature of consolidated government. As a political subdivision of the state, such consolidated municipality shall have the status of a county, and for the purpose of representation in the legislature, as provided by the constitution and laws of this state, and for all other purposes, it shall replace and be the successor of the county and shall be attached to the same judicial district.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part).

7-3-1203. General powers of consolidated government. (1) The inhabitants of every consolidated municipality organized under the provisions of this part and part 13, as its limits are at the time of such organization or as they may be thereafter established as provided by law, shall be a body politic and corporate under the designation and name as adopted at the election providing for such consolidation and merging and as such shall have perpetual succession; may use a corporate seal; may sue and be sued; may contract and be contracted with; may acquire property within or without the boundaries of the municipality for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, appropriation, lease, or lease with privilege of purchase and may sell, lease, hold, manage, and control such property as the interest of the municipality may require; may levy and collect such taxes as are authorized by this part or part 13 or by the general laws of the state; and except as otherwise provided in this part and part 13, such municipality shall have and may exercise all other powers that are now or hereafter may be conferred on counties, cities, and towns by the laws of this state.

(2) All powers of the municipality, whether expressed or implied, shall be exercised and enforced in the manner prescribed in this part and part 13 or in the general laws of the state or, when not so prescribed, then as may be prescribed by ordinance or resolution of the commission.

History: En. Sec. 6, Ch. 121, L. 1923; re-en. Sec. 5520.6, R.C.M. 1935; R.C.M. 1947, 11-3406.

7-3-1204. Petition for city-county consolidated government — election required. (1) The question of the abandonment and termination of the separate corporate existence and government of a county and of each city and town therein and the consolidation and merging of the existence and government of the county and each of the cities and towns therein into one municipal corporation and government under the provisions of this part and part 13 shall be submitted to the registered electors of the county if a petition is filed in the office of the election administrator of the county, signed by at least 20% of the electors of the county whose names appear on the official register of voters of the county on the date of the filing of the petition, requesting that such question be submitted to the registered electors of the county.

(2) The petition shall be substantially in the form and shall be signed, verified, and filed in the manner prescribed in 7-5-132 through 7-5-137 for initiative and referendum petitions and shall designate therein the name by which the consolidated government is to be known, which must be either that of the county or of some one of the cities or towns therein.

History: (1)En. Sec. 2, Ch. 121, L. 1923; re-en. Sec. 5520.2, R.C.M. 1935; Sec. 11-3402, R.C.M. 1947; (2)En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; Sec. 11-3403, R.C.M. 1947; R.C.M. 1947, 11-3402, 11-3403(part); amd. Sec. 3, Ch. 262, L. 1979; amd. Sec. 381, Ch. 571, L. 1979.

7-3-1205. Certification of petition — board action. (1) If the county election administrator shall find that such petition or amended petition so filed is signed by the required number of registered electors, he shall so certify to the board of county commissioners of such county at their next regular meeting.

(2) Such board shall, within 10 days after receiving the election administrator's certificate, order a special election to be held, at which election such question shall be submitted to the registered electors of the county. Such order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days from and after the day when such order is made, and the board of county commissioners shall immediately upon making such order issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by 13-1-108.

History: En. Sec. 3, Ch. 121, L. 1923; re-en. Sec. 5520.3, R.C.M. 1935; R.C.M. 1947, 11-3403(part); amd. Sec. 382, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-3-1206. Form of ballot. At such election the ballots to be used shall be printed on plain white paper, shall conform as nearly as possible to the ballots used in general elections, and shall have printed thereon the following:

Shall the corporate existence and government of the county of .... and of each and every city and town therein be consolidated and merged into one municipal corporation and government under the provisions of chapter 121, acts of the eighteenth legislative assembly of the state of Montana, to be known and designated as "city and county of ...."?

☐ YES.
☐ NO.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

7-3-1207. Conduct of election. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 4, Ch. 121, L. 1923; re-en. Sec. 5520.4, R.C.M. 1935; R.C.M. 1947, 11-3404(part).

7-3-1208. Election of commission upon favorable vote. (1) If the majority of the votes cast at such election shall be in favor of such consolidation and merging, the board of county commissioners of such county must, within 2 weeks after such election returns have been canvassed, order a special election to be held for the purpose of electing the number of members of the commission to which such consolidated municipality shall be entitled. This order shall specify the time when such election shall be held, which shall be not less than 90 or more than 120 days after the day when such order is made; provided, however, that if any general election is to be held in such county after 3 months but within 6 months from the date of the making of such order, then such order shall require such special election to be held at the same time as such general election. The board of county commissioners, immediately upon making such order, shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding the same, which proclamation must be published in the manner prescribed by 13-1-108.

(2) No primary election shall be held for the purpose of nominating candidates for members of the commission hereinafter provided for, to be voted for at such special election, but such candidates shall be nominated directly by petition which shall be in substantially the same form and be signed by the same number of signers as hereinafter required for primary nominating petitions. Such election shall be conducted, vote returned and canvassed, and result declared in the same manner as provided by law in respect to general elections.

History: En. Sec. 5, Ch. 121, L. 1923; re-en. Sec. 5520.5, R.C.M. 1935; R.C.M. 1947, 11-3405; amd. Sec. 383, Ch. 571, L. 1979.

7-3-1209. Resolution declaring creation of consolidated government. (1) At the first meeting of the commission whose members are first elected under the provisions of this part, the commission shall adopt a resolution reciting the filing of the petition provided for in 7-3-1204, the ordering and holding of a special election as requested in the petition, the result of the election and the holding of the special election for and the election of the members of the first commission, and the name and designation of the consolidated municipality. This resolution must be in duplicate and signed by all of the members of the commission and also entered at length on the journal of the commission. One copy of the resolution must be filed in the office of the clerk of the commission, and the other copy must be transmitted to and filed in the office of the secretary of state.

(2) Immediately upon the adoption of the resolution by the commission, the separate corporate existence of the county and of each city and town therein is considered to be consolidated and merged into one municipal corporation under the name selected, designated, and adopted as provided in this part, and the consolidated municipality is considered to have succeeded to and to possess and own all of the property and assets of every kind and description and shall, except as otherwise provided, become responsible for all of the obligations and liabilities of the county, cities, and towns consolidated and merged.

History: En. Sec. 118, Ch. 121, L. 1923; re-en. Sec. 5520.119, R.C.M. 1935; R.C.M. 1947, 11-3559(part); amd. Sec. 4, Ch. 262, L. 1979.

7-3-1210. Existing contracts continued. All contracts entered into by the county or by any city or town therein or on behalf of any improvement district by such county or by any such city or town prior to the election and qualification of a commission under this part and part 13 shall continue in full force and effect subsequent thereto. Public improvements for which initial steps may have been taken under laws effective in the county prior to the election and qualification of a commission under this part and part 13 may thereafter be carried to completion in accordance with the provisions of such laws.

History: En. Sec. 115, Ch. 121, L. 1923; re-en. Sec. 5520.116, R.C.M. 1935; R.C.M. 1947, 11-3556.

7-3-1211. Treatment of existing ordinances. The commission first elected may, at its first meeting, make an order that all existing ordinances and resolutions of some one city or town within the consolidated municipality which are of general application in such city or town shall be continued in force and be extended throughout the consolidated municipality, and a copy of such order must be published at least once in each newspaper printed and published within the consolidated municipality within 10 days after the making of such order. All other ordinances and resolutions of such city or town and all ordinances of all other cities and towns within the consolidated municipality, save and except ordinances and resolutions relating to public improvements to be paid for in whole or in part by special assessments, shall, upon the making of such order, be deemed repealed.

History: En. Sec. 116, Ch. 121, L. 1923; re-en. Sec. 5520.117, R.C.M. 1935; R.C.M. 1947, 11-3557.

7-3-1212. Treatment of existing officers. The members of the board of county commissioners of the county and members of the council of every city and town therein holding office on the date when any election is held at which the question of the consolidation and merging of the county and city and town governments is approved and adopted by the qualified electors of the county shall continue in office and in the performance of their duties until the first commission shall have been elected and have qualified, whereupon such board of county commissioners and city and town councils shall be deemed abolished. All other persons holding offices or positions, whether elective or appointive, under the government of such county or under the government of any city or town therein at the date of such election shall continue in the performance of the duties of their respective offices and positions until provision shall be made by the commission for the performance or discontinuance of such duties or the discontinuance of such offices or positions.

History: En. Sec. 117, Ch. 121, L. 1923; re-en. Sec. 5520.118, R.C.M. 1935; R.C.M. 1947, 11-3558.

7-3-1213. Power to effectuate transition. The commission shall have power to make all necessary regulations not inconsistent with this part or part 13 for the transition from the several governments of and within the county to the government provided by this part and part 13, including the transfer to the treasury of the consolidated city and county of all funds and money of such several governments.

History: En. Sec. 119, Ch. 121, L. 1923; re-en. Sec. 5520.120, R.C.M. 1935; R.C.M. 1947, 11-3560.

7-3-1214. Consolidated municipality commission. (1) Except as otherwise provided in this part or part 13, all powers of the consolidated municipality are vested in a commission. For the purpose of determining the number of members composing the commission, consolidated municipalities organized under the provisions of this part and part 13 shall be classified and all of the provisions of 7-1-2111 and 7-1-2112 govern and control the classification of the consolidated municipalities.

(2) (a) In consolidated municipalities of the first class, the commission shall consist of seven members.

(b) In consolidated municipalities of the second class, third class, or fourth class, the commission shall consist of five members.

(c) In consolidated municipalities of the fifth class, sixth class, or seventh class, the commission shall consist of three members.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 5, Ch. 262, L. 1979.

7-3-1215. Qualifications for commission. (1) Members of the commission must be qualified electors of the consolidated municipality and may not hold any other public office except that of notary public or member of the state militia.

(2) A member of the commission ceasing to possess any of the qualifications specified in this section shall immediately forfeit his office.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part); amd. Sec. 6, Ch. 262, L. 1979.

7-3-1216. Term of office of commission members. (1) Except as provided in subsection (2), the term of office of members of the commission shall be 4 years and shall commence on July 1 following their election.

(2) The terms of office of the members first elected at such special election shall commence on the first day of the third month following their election, and the terms of office of a majority of such members first elected, to be determined by lot, shall expire on June 30 in the first year following their election, and the terms of the remaining members first elected shall expire on June 30 in the third year following their election.

History: En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; R.C.M. 1947, 11-3407(part).

7-3-1217. Vacancies. (1) If a vacancy occurs in the commission, except as the result of a recall election, some eligible person shall be chosen by a majority vote of the remaining members to fill the place for the unexpired term.

(2) Absence from all regular meetings for a period of 90 days shall operate to vacate the seat of a member unless such absence be authorized by the commission.

History: (1)En. Sec. 7, Ch. 121, L. 1923; re-en. Sec. 5520.7, R.C.M. 1935; Sec. 11-3407, R.C.M. 1947; (2)En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; Sec. 11-3413, R.C.M. 1947; R.C.M. 1947, 11-3407(part), 11-3413(part).

7-3-1218. Meetings of commission. (1) (a) Except as provided in subsection (1)(b), at 2 p.m. on the first Monday of January following a regular municipal election, the commission shall meet at the courthouse in the consolidated municipality and the newly elected members shall assume the duties of office.

(b) The first meeting of the commission after the special election at which the first members of the commission are elected shall be held at 2 p.m. on the first day of the third month following the special election, and at this meeting the members of the commission shall determine by lot the members whose terms will expire on the first Monday of January in the first year following such special election and the members whose terms will expire on the first Monday of January in the third year following such election.

(2) Thereafter the commission shall meet at such times as may be prescribed by ordinance or resolution, but not less frequently than once in each month. Special meetings shall be called by the clerk of the commission upon written request of the president, the manager, or a majority of the members of the commission. A notice of a meeting shall state the subject to be considered at the meeting, and no other subject shall be considered at the meeting.

(3) All meetings of the commission and of committees thereof shall be open to the public, and the rules of the commission shall provide that citizens of the municipality shall have a reasonable opportunity to be heard at any meeting in regard to any matter considered thereat.

History: En. Sec. 8, Ch. 121, L. 1923; re-en. Sec. 5520.8, R.C.M. 1935; R.C.M. 1947, 11-3408; amd. Sec. 7, Ch. 262, L. 1979; amd. Sec. 384, Ch. 571, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 262 and Ch. 571, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 262 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language in subsection (1) between Ch. 262 and Ch. 571 has been resolved in favor of the language used in Ch. 571.

7-3-1219. Organization and officers of commission. (1) At the first meeting of the commission following the special election at which the members thereof are first elected and thereafter at its meeting on July 1 following each general election at which members of the commission are elected, the commission shall choose one of its members as president and another as vice-president.

(2) The president shall preside at meetings of the commission and shall exercise the powers and perform the duties conferred and imposed by this part or part 13 and the ordinances of the municipality. He shall be recognized as the official head of the municipality for all ceremonial purposes, by

the courts for serving civil processes, and by the governor for purposes of military law. In time of public danger or emergency he shall, if authorized by vote of the commission, take command of the police, maintain order, and enforce the law. If a vacancy occurs in the office of president or in case of his absence or disability, the vice-president shall act as president for the unexpired term or during the continuance of the absence or disability.

(3) The director of finance shall be ex officio clerk of the commission and shall, either in person or by deputy, keep the records of the commission and perform such other duties as may be required by this part or part 13 or by the commission.

History: (1), (2)En. Sec. 10, Ch. 121, L. 1923; re-en. Sec. 5520.10, R.C.M. 1935; Sec. 11-3410, R.C.M. 1947; (3)En. Sec. 11, Ch. 121, L. 1923; re-en. Sec. 5520.11, R.C.M. 1935; Sec. 11-3411, R.C.M. 1947; R.C.M. 1947, 11-3410, 11-3411.

7-3-1220. Conduct of commission business. (1) The commission shall determine its own rules and order of business and shall keep a journal of its proceedings. It shall have power to compel the attendance of absent members, may punish its members for disorderly behavior, and, by vote of not less than two-thirds of its members, may expel a member for disorderly conduct or the repeated violation of its rules; but no member shall be expelled unless notified of the charge against him and given an opportunity to be heard.

(2) A majority of the members elected to the commission shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The affirmative vote of a majority of the members elected to the commission shall be necessary to adopt any ordinance, resolution, order, or vote; except that a vote to adjourn or regarding the attendance of absent members may be adopted by a majority of the members present.

History: (1)En. Sec. 9, Ch. 121, L. 1923; re-en. Sec. 5520.9, R.C.M. 1935; Sec. 11-3409, R.C.M. 1947; (2)En. Sec. 12, Ch. 121, L. 1923; re-en. Sec. 5520.12, R.C.M. 1935; Sec. 11-3412, R.C.M. 1947; R.C.M. 1947, 11-3409, 11-3412.

7-3-1221. Compensation of commission members. (1) The commission may by ordinance provide compensation for its members, but the total amount and manner of compensation may not exceed the maximum sum prescribed by law for aldermen of cities of the first class.

(2) In addition to any compensation authorized by this section, each member of the commission shall receive the same sum prescribed by law for county commissioners per mile for any distance in excess of 10 miles necessarily traveled in going from and returning to his residence because of attendance upon a regular or regularly called meeting of the commission or in travel in the county undertaken in performance of official duties.

History: En. Sec. 13, Ch. 121, L. 1923; re-en. Sec. 5520.13, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1967; R.C.M. 1947, 11-3413(part).

7-3-1222. Procedure to enact ordinances and resolutions. (1) Ordinances and resolutions shall be introduced in the commission only in written or printed form. All ordinances or resolutions, except ordinances making appropriations, shall be confined to one subject, which shall be clearly expressed in the title, except as provided in 7-3-1226. Ordinances making appropriations shall be confined to the subject of appropriations. No ordinance shall be passed until it has been read on 3 separate days, unless the requirement of reading on 3 separate days has been dispensed with by a vote of not less than two-thirds of the members of the commission. The final reading shall be in full unless a written or printed copy of the measure shall have been furnished to each member of the commission prior to such reading.

(2) The enacting clause of all ordinances passed by the commission shall be: "Be it ordained by the city and county of ....", and the enacting clause of all ordinances submitted by the initiative shall be: "Be it ordained by the people of the city and county of .....".

(3) No ordinance, resolution, or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance, resolution, or section thereof as revised or amended.

(4) Every ordinance, or resolution upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signatures of the president and clerk. Within 10 days after its final passage, each ordinance or resolution shall be published at least once in such manner as the commission may provide by ordinance.

(5) Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission, as in the case of other ordinances.

History: (1), (2)En. Sec. 14, Ch. 121, L. 1923; re-en. Sec. 5520.14, R.C.M. 1935; Sec. 11-3414, R.C.M. 1947; (3)En. Sec. 16, Ch. 121, L. 1923; re-en. Sec. 5520.16, R.C.M. 1935; Sec. 11-3416, R.C.M. 1947; (4)En. Sec.18, Ch. 121, L. 1923; re-en. Sec. 5520.18, R.C.M. 1935; Sec. 11-3418, R.C.M. 1947; (5)En. Sec. 24, Ch. 121, L. 1923; re-en. Sec. 5520.24, R.C.M. 1935; Sec. 11-3424, R.C.M. 1947; R.C.M. 1947, 11-3414, 11-3416, 11-3418, 11-3424(part).

7-3-1223. Effective date of ordinances. (1) Ordinances making the annual tax levy, ordinances and resolutions providing for local improvements and assessments, and emergency measures shall take effect at the time indicated therein. All other ordinances and resolutions enacted by the commission shall be in effect from and after 30 days from the date of their passage.

(2) When an ordinance proposed by initiative petition is passed by the commission in a changed or amended form and the committee of the petitioners requires that such proposed ordinance be submitted to a vote of the electors, as provided in 7-3-1229, the ordinance as passed by the commission shall not take effect until after such vote, and if the proposed ordinance so submitted be approved by a majority of the electors voting thereon, the ordinance as passed by the commission shall be deemed repealed.

(3) Ordinances adopted by the electors shall take effect at the time fixed therein or, if no time is specified, 30 days after the adoption thereof.

History: (1), (3)En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; Sec. 11-3417, R.C.M. 1947; (2)En. Sec.23, Ch. 121, L. 1923; re-en. Sec. 5520.23, R.C.M. 1935; Sec. 11-3423, R.C.M. 1947; R.C.M. 1947, 11-3417(part), 11-3423.

7-3-1224. Emergency measures. An emergency measure is an ordinance or resolution to provide for the immediate preservation of the public peace, health, or safety, in which the emergency claimed is set forth and defined in a preamble thereto. The affirmative vote of at least two-thirds of the members of the commission shall be required to pass an emergency ordinance or resolution.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part).

7-3-1225. Vote required on certain measures. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege may be passed without first submitting the application therefor to the qualified electors in the manner provided by 7-5-4321 and 7-5-4322.

History: En. Sec. 17, Ch. 121, L. 1923; re-en. Sec. 5520.17, R.C.M. 1935; R.C.M. 1947, 11-3417(part); amd. Sec. 8, Ch. 262, L. 1979.

7-3-1226. Codification of ordinances. (1) Ordinances may be revised, codified, rearranged, and published in book form under appropriate titles, chapters, and sections, and such revision and codification may be made in one ordinance containing one or more subjects. The publication of such revision and codification in book form as aforesaid shall be held to be a sufficient publication of the ordinance or several ordinances contained in such revision and codification.

(2) Any such publication of a revision or codification of ordinances in book form shall contain a certificate of the president and clerk of the correctness of such revision, codification, and publication; and such book so published shall be received in evidence in any court for the purpose of proving the ordinance or ordinances therein contained, the same and for the same purpose as the original book, ordinances, minutes, or journals would be received.

History: En. Sec. 15, Ch. 121, L. 1923; re-en. Sec. 5520.15, R.C.M. 1935; R.C.M. 1947, 11-3415.

7-3-1227. Petition for initiative. (1) Any proposed ordinance, except an ordinance making a tax levy or appropriation, may be submitted to the commission by petition signed by 10% of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission.

(2) All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in 7-3-1227 through 7-3-1229 for initiating ordinances.

History: En. Secs. 19, 24, Ch. 121, L. 1923; re-en. Secs. 5520.19, 5520.24, R.C.M. 1935; R.C.M. 1947, 11-3419, 11-3424(part).

7-3-1228. Action on initiative petition. (1) If an initiative petition or amended petition be found sufficient by the clerk, he shall so certify and shall submit the ordinance therein set forth to the commission at its next meeting, and the commission shall at once read and refer it to an appropriate committee, which may be a committee of the whole.

(2) Provision shall be made for public hearings upon the proposed ordinance before the committee to which it is referred. Thereafter, the committee shall report the ordinance to the commission, with its recommendations thereon, not later than 60 days after the date on which such ordinance was submitted to the commission by the clerk.

(3) Upon receiving the ordinance from the committee, the commission shall proceed at once to consider it and shall take final action thereon within 30 days from the date of such committee report.

History: **En. Sec. 20, Ch. 121, L. 1923; re-en. Sec. 5520.20, R.C.M. 1935; R.C.M. 1947, 11-3420.**

7-3-1229. Submission of initiative measure to electors. (1) If the commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition therefor, the committee of the petitioners hereinafter provided for may require that it be submitted to a vote of the electors either in its original form or with any change or amendment presented in writing, either at a public hearing before the committee to which the proposed ordinance was referred or during the consideration thereof by the commission. If the committee of petitioners requires the submission of a proposed ordinance to a vote of the electors, the committee shall certify that fact to the clerk and file in his office a certified copy of the ordinance, in the form in which it is to be submitted, within 10 days after final action on such ordinance by the commission.

(2) Upon receipt of the certified copy of a proposed ordinance from the committee of the petitioners, the clerk shall certify the fact to the commission at its next regular meeting. If a municipal election is to be held within 6 months but more than 90 days after the receipt of the clerk's certificate by the commission, such proposed ordinance shall be submitted to a vote of the electors at such election. If no such election is to be held within the time aforesaid, the commission may provide for submitting the proposed ordinance to the electors at a special election to be held not sooner than 90 days after receipt of the clerk's certificate. If no municipal election be held within 6 months as aforesaid and the commission does not provide for a special election, the proposed ordinance shall be submitted to the electors at the first election held after the expiration of such 6 months. If when submitted to the electors a majority of those voting on a proposed ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the municipality.

History: **(1)En. Sec. 21, Ch. 121, L. 1923; re-en. Sec. 5520.21, R.C.M. 1935; Sec. 11-3421, R.C.M. 1947; (2)En. Sec. 22, Ch. 121, L. 1923; re-en. Sec. 5520.22, R.C.M. 1935; Sec. 11-3422, R.C.M. 1947; R.C.M. 1947, 11-3421, 11-3422.**

7-3-1230. Petition for referendum. (1) The electors shall have power to approve or reject at the polls any ordinance passed by the commission except an ordinance making a tax levy or an emergency measure, such power being known as the referendum. Ordinances submitted to the commission and passed by the commission without change or passed in an amended form and not required by the committee of the petitioners to be submitted to a vote of the electors shall be subject to the referendum in the same manner as other ordinances.

(2) If, within 30 days after the final passage of an ordinance, a petition signed by 10% of the qualified electors whose names appear on the register of voters on the date when such petition is filed shall be filed with the clerk requesting that the ordinance or any specified part thereof be either repealed or submitted to a vote of the electors, it shall not become operative until the steps indicated herein have been taken. Referendum petitions shall contain the text of the ordinance or part thereof, the repeal of which is sought.

History: **En. Sec. 25, Ch. 121, L. 1923; re-en. Sec. 5520.25, R.C.M. 1935; R.C.M. 1947, 11-3425.**

7-3-1231. Action on referendum petition. (1) If a referendum petition or amended petition is found sufficient by the clerk, he shall certify that fact to the commission at its next regular meeting, and the ordinance or part thereof set forth in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until approved by the electors as hereinafter provided.

(2) Upon receipt of the clerk's certificate, the commission shall proceed to reconsider the ordinance or part thereof, and its final vote upon such reconsideration shall be upon the question "Shall the ordinance (or part of the ordinance) set forth in the referendum petition be repealed?" If upon such reconsideration the ordinance or part thereof is not repealed, it shall be submitted to the electors at the next municipal election held not less than 90 days after such final vote by the commission. The commission, by vote of not less than two-thirds of its members, may submit the ordinance or part thereof to the electors at a special election to be held not sooner than the time aforesaid. If when submitted to the electors any ordinance or part thereof is not approved by a majority of those voting thereon, it shall be deemed repealed.

History: En. Sec. 26, Ch. 121, L. 1923; re-en. Sec. 5520.26, R.C.M. 1935; R.C.M. 1947, 11-3426.

7-3-1232. Preliminary acts authorized prior to submission of certain ordinances to electors. In case a petition is filed requiring that an ordinance passed by the commission providing for the expenditure of money, a bond issue, or a public improvement be submitted to a vote of the electors, all steps preliminary to such actual expenditure, actual issuance of bonds, or actual execution of the contract for such improvement may be taken prior to the election.

History: En. Sec. 28, Ch. 121, L. 1923; re-en. Sec. 5520.28, R.C.M. 1935; R.C.M. 1947, 11-3428.

7-3-1233. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-1234. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-1235 through 7-3-1240 reserved.

7-3-1241. Appointment and removal of manager of consolidated municipality. (1) The commission shall appoint a manager. He shall be chosen by the commission solely on the basis of his executive and administrative qualifications and need not, when appointed, be a resident of the municipality. No member of the commission shall, during the time for which elected, be chosen manager. In case of the absence or disability of the manager, the commission may designate some responsible person to perform the duties of the office. The manager shall receive such compensation as may be fixed by the commission.

(2) The manager shall not be appointed for a definite term but shall be removable at the pleasure of the commission. In case the commission determines to remove the manager, he shall, if he so demands, be given a written statement of the reason alleged for the proposed removal and the right to be heard thereon at a public meeting of the commission prior to the date on

which his final removal shall take effect, but pending and during such hearing the commission may suspend him from office. The action of the commission in suspending or removing the manager shall be final, it being the intention of this section to vest all authority and fix all responsibility for any such suspension or removal in the commission.

History: En. Sec. 32, Ch. 121, L. 1923; re-en. Sec. 5520.32, R.C.M. 1935; R.C.M. 1947, 11-3432(part).

7-3-1242. Role of manager. (1) The manager shall be the chief executive officer of the municipality.

(2) The manager shall be responsible to the commission for the proper administration of the affairs of the municipality placed in his charge and to that end shall appoint all officers and employees in the administrative service of the municipality, except as otherwise provided in this part or part 13 and except as he may authorize the head of a department or office responsible to him to appoint subordinates in such department or office.

History: En. Secs. 32, 33, Ch. 121, L. 1923; re-en. Secs. 5520.32, 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3432(part), 11-3433(part).

7-3-1243. Appointments by manager. Appointments by or under the authority of the manager shall be confined to citizens of the municipality, except in such specific cases as the commission may suspend this requirement, and shall be on the basis of the ability, training, and experience of the appointees in the work which they are to perform. All such appointments shall be without definite term unless for temporary service not to exceed 60 days.

History: En. Sec. 33, Ch. 121, L. 1923; re-en. Sec. 5520.33, R.C.M. 1935; R.C.M. 1947, 11-3433(part).

7-3-1244. Removal of appointees. (1) Any officer or employee of the municipality appointed by the manager or upon his authorization may be laid off, suspended, or removed from office or employment either by the manager or the officer by whom appointed. Verbal or written notice of layoff, suspension, or removal given to an officer or employee or written notice left at or mailed to his usual place of residence shall be sufficient to put any such layoff, suspension, or removal into effect unless the person so notified shall, within 5 days of such notice, demand a written statement of reasons therefor and the right to be heard thereon before the manager. Upon such demand the officer making the layoff, suspension, or removal shall supply the person notified thereof with a written statement of the reasons therefor, and the manager shall fix a time and place for the public hearing. Following the public hearing the manager shall either confirm the layoff, suspension, or removal as specified in the notice, reinstate the person so notified in the service, or make such other disposition of the matter as in his opinion the good of the service may require.

(2) The decision of the manager in any such case shall be final, and there shall be no appeal therefrom to any officer, body, or court whatsoever. A copy of the written statement of reasons given for any layoff, suspension, or removal and a copy of any written reply thereto by the officer or employee involved, together with a copy of the decision of the manager, shall be filed as a public record in the office of the clerk.

History: En. Sec. 34, Ch. 121, L. 1923; re-en. Sec. 5520.34, R.C.M. 1935; R.C.M. 1947, 11-3434.

7-3-1245. Relationship of commission and manager regarding appointments and administrative service. (1) Neither the commission nor any of its committees or members shall direct or request the appointment of any person to or his removal from office or employment by the manager or any of his subordinates or in any manner take part in the appointment or removal of officers and employees in the administrative service of the municipality. Except for the purpose of inquiry, the commission and its members shall deal with that portion of the administrative service for which the manager is responsible solely through the manager, and neither the commission nor any member thereof shall give orders to any subordinate of the manager either publicly or privately.

(2) Any violation of the provisions of this section by a member of the commission shall be a misdemeanor, conviction of which shall immediately forfeit the office of the member so convicted.

History: **En. Sec. 35, Ch. 121, L. 1923; re-en. Sec. 5520.35, R.C.M. 1935; R.C.M. 1947, 11-3435.**

7-3-1246. General duties of manager. It shall be the duty of the manager to act as chief conservator of the peace within the municipality, to supervise the administration of the affairs of the municipality, to see that the ordinances of the municipality and the laws of the state are enforced, to make such recommendations to the commission concerning the affairs of the municipality as may seem to him desirable, to keep the commission advised of the financial conditions and future needs of the municipality, to prepare and submit to the commission such reports as may be required by that body, and to perform such other duties as may be prescribed by this part or part 13 or be required of him by ordinance or resolution of the commission.

History: **En. Sec. 36, Ch. 121, L. 1923; re-en. Sec. 5520.36, R.C.M. 1935; R.C.M. 1947, 11-3436.**

7-3-1247. Attendance and participation of manager, directors, and other officers at commission meetings. The manager, the directors of all departments, and all other officers of the municipality shall be entitled to be present at all sessions of the commission. The manager shall have the right to take part in the discussion of all matters coming before the commission, and the directors and other officers shall be entitled to take part in all discussions of the commission relating to their respective departments and offices.

History: **En. Sec. 37, Ch. 121, L. 1923; re-en. Sec. 5520.37, R.C.M. 1935; R.C.M. 1947, 11-3437.**

7-3-1248. Departments of consolidated municipality. (1) (a) In consolidated municipalities of the first, second, third, or fourth class, there shall be a department of finance, a police department, a department of public works, a department of health, a fire department, and such other departments and offices as may be established by ordinance.

(b) In consolidated municipalities of the fifth, sixth, or seventh class, there shall be a department of finance, a police department, a department of public works, a department of health, and such other departments and offices as may be established by ordinance.

(2) The commission may change or abolish any department or office established by ordinance and may prescribe, combine, distribute, or discontinue the functions and duties thereof. Additional functions and duties may

be by ordinance assigned to departments and offices created by this part or part 13, but no function or duty assigned by this part or part 13 to any such department or office shall be discontinued or assigned to any other department or office. If the manager so recommends and the commission so authorizes, the manager may appoint one person to act as the head of two or more departments or offices, but the department of law may not thus be joined with any other department, nor may the manager be authorized to act as head of the department of finance or of any office therein other than of purchasing agent or assessor.

History: **En. Sec. 38, Ch. 121, L. 1923; re-en. Sec. 5520.38, R.C.M. 1935; R.C.M. 1947, 11-3438; amd. Sec. 10, Ch. 262, L. 1979.**

7-3-1249. Employees and employment list. (1) The number of assistants and other subordinates to be employed in or by each administrative department or office shall be fixed by the commission, but the commission may authorize the manager to determine the number of such assistants and subordinates in and for a specified department or office, subject to the appropriations made thereto.

(2) The director of finance shall maintain in his office a list of all persons in the administrative service of the municipality, showing in connection with each name the position held, the date of appointment, the character of employment, and the rate of compensation. Each appointing officer shall promptly transmit to the director of finance such information regarding his department or office as may be necessary to keep this list accurate in all respects at all times. The treasurer shall not pay nor shall the director of finance issue any warrant for the payment of any salary or compensation to any person whose name does not appear upon such list, nor shall payment be made at a rate other than that specified on such list. Any sum paid contrary to the foregoing provisions of this section may be recovered from any officer paying or authorizing the payment thereof or from the surety on his official bond. If through the failure of any officer to give information to the director of finance as required in this section or through omission or error in such information, payment is made to any person whose name should not be on such list or payment is made in excess of the amount which any person whose name is rightfully on the list should receive, then the amount of any such payment or excess payment may be recovered from the officer by reason of whose failure, omission, or error the payment or excess payment was made or from the surety on his official bond.

History: **En. Secs. 39, 40, Ch. 121, L. 1923; re-en. Secs. 5520.39, 5520.40, R.C.M. 1935; R.C.M. 1947, 11-3439, 11-3440.**

7-3-1250. Compensation of officers and employees. The compensation of officers and employees in the administrative service of the municipality shall be fixed by ordinance, but all positions in such service, except those of heads of departments and heads of offices not included within regular departments, shall, for purposes of compensation, be graded and classified by the manager according to duties and responsibilities. The commission shall by ordinance establish a schedule of compensation for the positions so graded and classified, which shall prescribe uniform compensation for like service as determined by the grading and classification by the manager. Such schedule of compensation may establish a minimum and maximum for any grade, and an increase in compensation within the limits provided for any grade may be granted by the manager upon the basis of efficiency and seniority.

History: En. Sec. 41, Ch. 121, L. 1923; re-en. Sec. 5520.41, R.C.M. 1935; R.C.M. 1947, 11-3441.

7-3-1251. Advisory boards. The manager may appoint a board of citizens qualified to act in an advisory capacity to the head of any specified department or office. The members of all such boards shall serve without compensation, and it shall be their duty to consult with and advise the officer in charge of the department or office for which they are appointed, but not to direct the conduct of such department or office. Public meetings of such boards may be called for the consideration of the affairs of the department or office for which they are appointed.

History: En. Sec. 42, Ch. 121, L. 1923; re-en. Sec. 5520.42, R.C.M. 1935; R.C.M. 1947, 11-3442.

7-3-1252. Investigatory powers of commission and manager. (1) The commission, the manager, or any person or committee authorized by either of them shall have power to inquire into the conduct of any department or office of the municipality and to make investigations as to municipal affairs and for that purpose may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence.

(2) It shall be the duty of the manager to designate a police officer to serve subpoenas. The commission shall provide by ordinance the penalty or penalties for contempt in refusing to obey any such subpoena or to produce such books, papers, and other evidence and shall have the power to punish any such contempt in the manner provided by ordinance.

History: En. Sec. 43, Ch. 121, L. 1923; re-en. Sec. 5520.43, R.C.M. 1935; R.C.M. 1947, 11-3443.

7-3-1253. Disposition of money received by officers in official capacity. No person elected or appointed to any office or position under the municipal government established by this part and part 13 shall be entitled to or receive for his own use any fees, emoluments, commissions, or perquisites other than the salary or compensation fixed by this part and part 13 or by the commission; and all such fees, emoluments, commissions, and perquisites ensuing out of the performance of official duty shall belong to the municipality and be paid into the treasury thereof at the times and in the manner provided by the general laws of the state.

History: En. Sec. 107, Ch. 121, L. 1923; re-en. Sec. 5520.108, R.C.M. 1935; R.C.M. 1947, 11-3548.

7-3-1254. Nonpartisan nature of government. (1) No person holding an appointive office or position in the municipal government shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription, or contribution for any political party or purpose from any person holding an appointive office or position in the municipal government. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment to any position in the service of the municipality as a reward or return for personal or partisan political service.

No person shall take part in preparing any political assessment, subscription, or contribution with the intent that it should be sent or presented to or collected from any person in the service of the municipality, nor shall he knowingly send or present, directly or indirectly, in person or otherwise, any political assessment, subscription, or contribution to or request its payment by any person in such service.

(2) No person in the service of the municipality shall discharge, suspend, lay off, reduce in grade, or in any manner change the official rank or compensation of any person in such service or threaten to do so for withholding or neglecting to make any contribution of money or service or any valuable thing for any political service. No person holding an appointive office or place in the municipal government shall act as an officer in a political organization or serve as a member of a committee of any such organization or circulate or seek signatures for any petition provided for by primary or election laws.

(3) Any person who, by himself or in cooperation with one or more persons, willfully or corruptly violates any of the provisions of subsections (1) and (2) shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than $50 or more than $500 or by imprisonment for a term not exceeding 3 months or by both such fine and imprisonment, and if he is an officer or employee of the municipality, he shall immediately forfeit his office or employment.

History: En. Secs. 108, 109, 110, Ch. 121, L. 1923; re-en. Secs. 5520.109, 5520.110, 5520.111, R.C.M. 1935; R.C.M. 1947, 11-3549, 11-3550, 11-3551.

7-3-1255. Commissioners not to hold or seek other office. No person elected to the commission shall, during the term for which elected, be appointed to any office or position in the service in the municipality. If a member of the commission shall become a candidate for any public office other than that of commissioner, he shall immediately forfeit his place on the commission.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

7-3-1256. Appointive officers not to seek other office. Any appointive officer or employee of the municipality who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the municipality.

History: En. Sec. 111, Ch. 121, L. 1923; re-en. Sec. 5520.112, R.C.M. 1935; R.C.M. 1947, 11-3552(part).

7-3-1257. Control of conflict of interest. No officer or employee of the municipality shall have a financial interest, direct or indirect, in any contract therewith or be financially interested, directly or indirectly, in the sale to the municipality of any land, materials, supplies, or services except on behalf of the municipality as an officer or employee. Any willful violation of this section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, actual or implied, of the person or corporation contracting with the municipality shall render the contract involved voidable by the manager or the commission.

History: En. Sec. 114, Ch. 121, L. 1923; re-en. Sec. 5520.115, R.C.M. 1935; R.C.M. 1947, 11-3555.

7-3-1258. Official bonds. (1) The members of the commission, the manager, the director of finance, the purchasing agent, the director of law, the director of police, and such other officers and employees of the municipality as the commission requires to do so shall, immediately upon taking office, give bonds with such surety as may be approved by the commission; but no officer or employee shall become surety upon the official bond of another officer or employee. Members of the commission shall give bonds in the sum of $5,000 and other officers and employees shall give bonds in such amounts as the commission may require. The premium on all official bonds shall be paid by the municipality.

(2) All such bonds, except those of the manager and the director of finance, shall be filed with the director of finance. The official bonds of the manager and the director of finance shall be filed with and kept by the director of the department of law.

History: En. Sec. 112, Ch. 121, L. 1923; re-en. Sec. 5520.113, R.C.M. 1935; R.C.M. 1947, 11-3553.

7-3-1259. Oath of office. Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the oath or affirmation required of officers by the constitution of the state of Montana, which oath or affirmation shall be filed and kept in the office of the clerk.

History: En. Sec. 113, Ch. 121, L. 1923; re-en. Sec. 5520.114, R.C.M. 1935; R.C.M. 1947, 11-3554.

7-3-1260 through 7-3-1270 reserved.

7-3-1271. General provisions related to elections. (1) For any election held on the question of the adoption of this part and part 13 and for the first election of members of the commission thereunder if adopted, the county election administrator and board of county commissioners shall exercise the powers and perform the duties respecting elections prescribed for county election administrators and boards of county commissioners by the general laws of the state.

(2) After the adoption of this part and part 13 by the electors of the county and the election and qualification of a commission thereunder, elections shall be conducted as provided in Title 7 and Title 13.

History: En. Secs. 89, 90, Ch. 121, L. 1923; re-en. Secs. 5520.90, 5520.91, R.C.M. 1935; R.C.M. 1947, 11-3530, 11-3531(part); amd. Sec. 385, Ch. 571, L. 1979.

7-3-1272 through 7-3-1280. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 13

City-County Consolidation
Option 2—Continued

7-3-1301. Department of finance. (1) The director of finance shall have charge of the administration of the financial affairs of the municipality, including the keeping and supervision of all accounts; the custody and disbursement of municipal funds and money; the making of special assessments and the assessment of property for taxation; the issuance of licenses; the collection of license fees; the control over expenditures; the purchase, storage, and distribution of supplies needed by the municipality; and such other duties as the commission may by ordinance require.

(2) He shall also have all powers and perform all duties imposed upon county clerk and recorders and auditors by general law.

(3) All of the provisions of the general laws of the state in respect to budgets for cities and counties shall apply to such municipality.

History: En. Secs. 45, 54, Ch. 121, L. 1923; re-en. Secs. 5520.45, 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3445, 11-3454(part).

7-3-1302. Fiscal year. The fiscal year of the municipality shall begin with July 1 and shall end with the succeeding June 30.

History: En. Sec. 54, Ch. 121, L. 1923; re-en. Sec. 5520.54, R.C.M. 1935; R.C.M. 1947, 11-3454(part).

7-3-1303. Monthly financial statements. The director of finance shall prepare and submit to the commission each month a summary statement of revenues and expenses for the preceding month, detailed as to appropriations and funds in such manner as shows the exact financial condition of the municipality and of each department and office thereof as of the last day of such month.

History: En. Sec. 46, Ch. 121, L. 1923; re-en. Sec. 5520.46, R.C.M. 1935; R.C.M. 1947, 11-3446.

7-3-1304. Division of audit and accounts. There shall be in the department of finance a division of audit and accounts, of which the director of finance shall himself be the head. As head of such office he shall be charged with keeping the books of financial account for all departments and offices of the municipality, and whenever practicable, such books and accounts shall be kept in the office of the division of audit and accounts. Report shall be made daily to the division of audit and accounts by each department and office, showing the receipt of all money and the disposition thereof.

History: En. Sec. 47, Ch. 121, L. 1923; re-en. Sec. 5520.47, R.C.M. 1935; R.C.M. 1947, 11-3447.

7-3-1305. Conduct of audits. (1) Upon the death, resignation, removal, or expiration of the term of any officer of the municipality, the director of finance shall cause an audit and investigation of the accounts of such officer to be made and shall report to the manager and the commission. Either the commission or the manager may at any time provide for an examination or audit of the accounts of any officer or department of the municipal government.

(2) In case of the death, resignation, or removal of the director of finance, the manager shall cause an audit to be made of his accounts.

(3) If, as a result of any such audit, an officer is found indebted to the municipality, the director of finance or other person making such audit shall immediately give notice thereof to the commission, the manager, and the director of law, and the latter shall forthwith proceed to collect such indebtedness.

History: En. Sec. 48, Ch. 121, L. 1923; re-en. Sec. 5520.48, R.C.M. 1935; R.C.M. 1947, 11-3448.

7-3-1306. Division of treasury. (1) There shall be in the department of finance a division of the treasury, the head of which shall be treasurer of the municipality, shall have the powers and perform the duties prescribed for city treasurers and county treasurers by general law, and shall be required to qualify by giving a bond in the same amount required of county treasurers of counties of the same class.

(2) All money received by an officer or employee of the municipality for or in connection with the business of the municipality shall be paid promptly into the treasury. The commission shall by ordinance provide for the prompt and regular payment of such money into the treasury and shall also, in the manner hereinafter provided, designate the banking institutions with which it shall be deposited.

History: En. Sec. 49, Ch. 121, L. 1923; re-en. Sec. 5520.49, R.C.M. 1935; R.C.M. 1947, 11-3449.

7-3-1307. Division of purchases and supplies. There shall be in the department of finance a division of purchases and supplies, at the head of which there shall be a purchasing agent. The purchasing agent shall make all purchases for the municipality in the manner and with such exceptions as may be provided by ordinance and shall, under such regulations as may be provided by ordinance, sell all property, real and personal, of the municipality not needed for public use or that may have become unsuitable for use. He shall have charge of such storerooms and warehouses of the municipality as the commission may by ordinance provide.

History: En. Sec. 50, Ch. 121, L. 1923; re-en. Sec. 5520.50, R.C.M. 1935; R.C.M. 1947, 11-3450.

7-3-1308. Procedure for purchase, sale, and supply. (1) Before making any purchase or sale, the purchasing agent shall give opportunity for competition, under such rules as the commission may by ordinance establish.

(2) Supplies required by any department or office of the municipality may be furnished upon requisition from the stores under the control of the purchasing agent and whenever so furnished shall be paid for by the department or office furnished therewith by warrant made payable to the credit of the store's account of the division of purchases and supplies. The purchasing agent shall not furnish any supplies to any department or office unless there is to the credit thereof an available unencumbered appropriation balance sufficient to pay for such supplies.

History: En. Sec. 51, Ch. 121, L. 1923; re-en. Sec. 5520.51, R.C.M. 1935; R.C.M. 1947, 11-3451.

7-3-1309. Division of assessment. (1) There shall be in the department of finance a division of assessment, the head of which shall be the assessor. The assessor and his deputies shall have the powers, qualify in the manner, and perform the duties prescribed for county assessors and deputy assessors by general law.

(2) The assessor shall also be in charge of the preparation of all special assessments for public improvements, the giving of notice of such assessments to property owners, and the certification of all unpaid assessments to the director of finance.

History: En. Secs. 52, 53, Ch. 121, L. 1923; re-en. Secs. 5520.52, 5520.53, R.C.M. 1935; R.C.M. 1947, 11-3452, 11-3453.

7-3-1310. Limitation on tax levy. (1) No ordinance making the annual tax levy shall be passed fixing the rate to be levied upon all property within the municipality to defray current expenses, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government.

(2) The tax limit provided by subsection (1) shall apply only to taxes for the purposes therein specified. Taxes required by this part or part 12 to be levied on account of the debt of the municipality or any district thereof and special taxes authorized by this part or part 12 or by the general laws of the state shall not be affected by such limits, nor shall such taxes be considered in determining the limits of taxation fixed by subsection (1).

History: **(1)En. Sec. 55, Ch. 121, L. 1923; re-en. Sec. 5520.55, R.C.M. 1935; amd. Sec. 1, Ch. 81, L. 1967; Sec. 11-3455, R.C.M. 1947; (2)En. Sec. 56, Ch. 121, L. 1923; re-en. Sec. 5520.56, R.C.M. 1935; Sec. 11-3456, R.C.M. 1947; R.C.M. 1947, 11-3455, 11-3456.**

7-3-1311. Authority for special taxes and special service districts. (1) The municipality shall have the power and authority to levy special taxes for all purposes which counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of such laws shall be applicable to and shall govern and control the municipality in the levying and collection of such special taxes.

(2) The commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in any such district such tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of such special service or services. The boundaries of special service districts shall be regularly reviewed by the commissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns. In no case shall such additional levy be more than 20 mills.

History: **(1)En. Sec. 57, Ch. 121, L. 1923; re-en. Sec. 5520.57, R.C.M. 1935; Sec. 11-3457, R.C.M. 1947; (2)En. Sec. 1, Ch. 162, L. 1925; re-en. Sec. 5520.58, R.C.M. 1935; amd. Sec. 2, Ch. 81, L. 1967; Sec. 11-3458, R.C.M. 1947; R.C.M. 1947, 11-3457, 11-3458.**

7-3-1312. Collection of taxes. All taxes levied by the municipality shall be collected and payable in the manner, at the time, and under the penalties prescribed by law for the collection and payment of state and county taxes.

History: **En. Sec. 58, Ch. 121, L. 1923; re-en. Sec. 5520.59, R.C.M. 1935; R.C.M. 1947, 11-3459.**

7-3-1313. Special taxing districts for indebtedness existing prior to consolidation. (1) The district comprised within the boundaries of any city, town, or district existing within the county at the time of the adoption of this part and part 12 by the electors thereof shall, for the purpose of paying the interest and principal of any debt incurred by such city, town, or district prior to such adoption, be continued as a special district until such debt shall have been paid. The commission shall, in the annual tax levy ordinance, levy upon the property within each such district such tax, in addition to all other taxes, as the director of finance shall report to be necessary to provide for paying the interest on each such debt as it falls due and the principal thereof as it matures, and no other property within the municipality shall be taxable or made liable for the payment of any such debt.

(2) The commission shall likewise provide in the annual tax levy ordinance for the levy of such tax upon all property within the municipality as the director of finance shall report to be necessary to provide for paying the interest as it falls due and the principal as it matures of any debt of the municipality as a whole.

(3) The tax levy for the debt of the municipality as a whole and the tax levy for the debt of each such district shall each be a separate levy and shall be distinct from and in addition to all other tax levies. The proceeds of each such tax levy shall be placed in a separate fund for the payment of the interest and principal of the debt for which the tax was levied, and no part of any such fund shall be used for any other purpose whatever.

History: En. Sec. 59, Ch. 121, L. 1923; re-en. Sec. 5520.60, R.C.M. 1935; R.C.M. 1947, 11-3460.

7-3-1314. Payment and investigation of claims — use of warrants. (1) No claim against the municipality shall be paid except by means of a warrant on the treasury issued by the director of finance. The director of finance shall issue no warrant for the payment of a claim unless the claim is evidenced by a voucher approved by the head of the department or office for which the indebtedness was incurred, and each such officer and his surety shall be liable to the municipality for all loss or damage sustained by reason of his negligent or corrupt approval of any claim.

(2) The director of finance shall examine all payrolls, bills, and other claims and demands against the municipality and shall issue no warrant for payment unless he finds that the claim is in proper form, correctly computed, and duly approved; that it is legally due and payable; and that an appropriation has been made therefor which has not been exhausted. He may investigate any claimant and for that purpose may summon before him any officer, agent, or employee of the municipality or any claimant or other person and examine him upon oath or affirmation relative thereto. If he finds a claim to be fraudulent, erroneous, or otherwise invalid or that the appropriation out of which such claim is payable has been exhausted, he shall not issue a warrant therefor. If the director of finance issue a warrant on the treasury authorizing payment of any claim in contravention of the provisions of this subsection, he and his sureties shall be individually liable to the municipality for the amount of such warrant if paid.

History: En. Secs. 60, 61, Ch. 121, L. 1923; re-en. Secs. 5520.61, 5520.62, R.C.M. 1935; R.C.M. 1947, 11-3501, 11-3502.

7-3-1315. Certification of certain obligations by finance director. (1) No contract, agreement, or other obligation, other than contracts pertaining to work or improvements to be paid for by special assessments, involving the expenditure of any funds shall be entered into nor shall any order for such expenditures be valid unless the director of finance shall first certify to the commission that the object or purpose for which such expenditure is to be made and the amount thereof is provided for by an appropriation in the annual budget or in a supplemental budget and that the same has not been expended. The certificate of the director of finance shall be filed and made a matter of record in his office, and the appropriation for such purpose shall thereafter be considered as having been set aside and expended to the amount of such contract, agreement, or obligation.

(2) All contracts, agreements, or other obligations entered into, all ordinances and resolutions passed, and all orders adopted contrary to the provisions of subsection (1) shall be void, and no person whatever shall have any claim or demand against the municipality thereunder, nor shall the commission or any officer of the municipality waive or qualify the limitations fixed by subsection (1) or fasten upon the municipality any liability whatever in excess thereof.

History: En. Secs. 62, 63, Ch. 121, L. 1923; re-en. Secs. 5520.63, 5520.64, R.C.M. 1935; R.C.M. 1947, 11-3503, 11-3504.

7-3-1316. Designation of depository banks. On or before August 1 of each year, the commission shall designate the banks subject to state or national supervision in which the funds of the municipality shall be deposited. In designating such banks, the commission shall specify the maximum amount of municipal funds that may be kept at any time in each.

History: En. Sec. 64, Ch. 121, L. 1923; re-en. Sec. 5520.65, R.C.M. 1935; R.C.M. 1947, 11-3505(part).

7-3-1317. Deposit security. (1) Unless a bank designated as a depository shall elect to deposit securities with the treasurer as provided in subsection (2), it shall give good and sufficient bonds, with sureties to be approved by the commission, conditioned for the safekeeping and payment of the municipal funds deposited therewith and the interest thereon. Any such bonds of a depository shall be in the aggregate equal to the amount designated by the commission as the maximum of municipal funds which may at any time be kept by such depository. All surety bonds given by a bank in accordance with the provisions of this subsection shall continue in force so long as funds of the municipality deposited therein shall be unpaid. Nothing provided herein shall impair the rights and remedies of the municipality on such bonds under the laws of the state.

(2) In lieu of the surety bonds specified in subsection (1), any bank designated as a depository of municipal funds may deposit with the treasurer bonds of the class and kind in which, by the provisions of 7-3-1322, the sinking fund of the municipality may be invested. Bonds so deposited shall be in an amount equal to the amount of municipal funds permitted at any time to be deposited with such bank, shall be approved by the commission, and shall be accompanied by proper assignment, to the end that the bank so depositing and assigning such bonds will safely keep and pay over to the treasurer or his order, on demand and free of exchange, all money at any time deposited therein with interest thereon at the rate agreed upon and that in case of default on the part of such bank, the commission shall have power and authority to sell such bonds or so much thereof as may be necessary to realize the full amount of the funds deposited therein. The bank shall be entitled to interest on the securities so deposited with the treasurer, when paid, and to the return of the securities at the termination of such trust so long as the bank is not in default. With the approval of the commission, a bank may at any time substitute other like securities of equal value for those so deposited.

(3) Bonds and other securities given by banks in accordance with this part shall be entered in a record to be kept for that purpose by the director of finance and deposited with the treasurer for safekeeping. The record of

such bonds and securities kept by the director of finance or copies thereof certified by that officer shall be competent and prima facie evidence of the contents and tenor thereof.

History: En. Secs. 64, 65, 67, Ch. 121, L. 1923; re-en. Secs. 5520.65, 5520.66, 5520.68, R.C.M. 1935; R.C.M. 1947, 11-3505(part), 11-3506, 11-3508.

7-3-1318. Additional or new deposit security. Whenever for any cause the commission shall deem the bonds or securities of any bank insufficient security for the municipal funds deposited or likely to be deposited therein, the commission shall require new bonds to be given or new securities to be deposited with the treasurer. If any bank shall fail promptly to execute and present such new bonds or deposit such new securities, the treasurer shall at once withdraw all deposits therefrom, and no further deposit of municipal funds shall be made therein until such bank shall have been redesignated by the commission as a depository.

History: En. Sec. 66, Ch. 121, L. 1923; re-en. Sec. 5520.67, R.C.M. 1935; R.C.M. 1947, 11-3507.

7-3-1319. Deposit of funds with depository banks. (1) All funds received by the treasurer shall be deposited by him in the designated banks in the name of the municipality, subject to the order of the treasurer, and shall be distributed among the designated banks as nearly as may be in proportion to the maximum amounts which they have been authorized to receive by the commission.

(2) Banks designated as depositories shall pay interest on daily balances of municipal funds at a rate approved by the commission, which shall in no case be less than 2 ½%. The interest due on such deposits shall be paid to the treasurer by check on the last day of each quarter of the fiscal year. If the treasurer shall at any time receive or have in any bank funds which will probably remain on deposit 3 months or longer, he may, with the approval of the commission, either take therefor certificates of deposit from a designated depository, payable to his order on demand and bearing a higher rate of interest, or invest such funds in any bonds maturing within 6 months in which the sinking fund of the municipality may be invested. The treasurer shall make a monthly statement to the director of finance of the municipal funds in each bank and the interest received therein, as of the last day of each month.

(3) No bank receiving funds of the municipality on deposit shall have authority to pay out any such money except upon checks drawn upon that bank signed by the treasurer.

History: (1)En. Sec. 68, Ch. 121, L. 1923; re-en. Sec. 5520.69, R.C.M. 1935; Sec. 11-3509, R.C.M. 1947; (2)En. Sec. 69, Ch. 121, L. 1923; re-en. Sec. 5520.70, R.C.M. 1935; Sec. 11-3510, R.C.M. 1947; (3)En. Sec. 70, Ch. 121, L. 1923; re-en. Sec. 5520.71, R.C.M. 1935; Sec. 11-3511, R.C.M. 1947; R.C.M. 1947, 11-3509, 11-3510, 11-3511.

7-3-1320. Liability for deposited funds. (1) When the funds of the municipality are deposited and kept in designated banks according to the provisions of this part, the treasurer and the sureties on his official bond shall be exempt from all liability for the loss of any funds so deposited if such loss is caused by the failure, bankruptcy, or any other act or default of such banks, but the want of care or due diligence on the part of the treasurer or commission in protecting the municipality against loss shall not exempt the treasurer, the members of the commission, or sureties on their respective bonds from liability.

(2) Nothing provided herein shall deprive the municipality of any right or remedy against any defaulting bank or against its officers or stockholders.

History: En. Sec. 71, Ch. 121, L. 1923; re-en. Sec. 5520.72, R.C.M. 1935; R.C.M. 1947, 11-3512.

7-3-1321. Authorization to incur indebtedness — limitation. (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality shall not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 5% of the value of the taxable property therein, as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness. All warrants, bonds, or obligations in excess of such amount given by or on behalf of the municipality shall be void.

History: En. Secs. 72, 73, Ch. 121, L. 1923; re-en. Secs. 5520.73, 5520.74, R.C.M. 1935; R.C.M. 1947, 11-3513, 11-3514.

7-3-1322. Investment of sinking funds. (1) The sinking funds of the municipality shall be in charge of a sinking fund board consisting of the president, the director of finance, and the director of law. The president shall be the chairman and the director of finance, the secretary of the board. By and with consent of the commission, the sinking fund board shall invest the sinking fund in bonds or certificates of indebtedness of the United States, state bonds or certificates of indebtedness of Montana or any other state of the United States, bonds of the municipality, registered warrants on the treasury of such municipality, bonds of any city in Montana, and in such county or school bonds of Montana as may be approved by the commission.

(2) In case the sinking fund is invested in bonds of the municipality, such bonds shall not be canceled before maturity but shall be held by the sinking fund board and the interest thereon paid over and applied to the increase of the sinking fund. Whenever the principal of any of the bonds of the municipality shall become due, the sinking fund board shall, with the consent of the commission, dispose of such of the bonds belonging to the sinking fund as, with the money on hand belonging to the sinking fund, shall be necessary to pay the bonds so becoming due.

History: En. Sec. 74, Ch. 121, L. 1923; re-en. Sec. 5520.75, R.C.M. 1935; R.C.M. 1947, 11-3515.

7-3-1323. Competitive, advertised bidding required for certain contracts. All contracts entered into by the municipality for supplies or materials, for any public work, or for the construction, reconstruction, repair, maintenance, or operation of any public works or improvements, for which must be paid a sum exceeding $2,000, shall be awarded to the lowest responsible bidder after public advertisement and competition as may be prescribed by ordinance, but the manager shall have the right to reject all bids and advertise again. All advertisements as to contracts shall contain a reservation of the foregoing right. All contracts entered into by the municipality shall be signed by the manager after approval thereof by the commission.

History: En. Sec. 75, Ch. 121, L. 1923; re-en. Sec. 5520.76, R.C.M. 1935; amd. Sec. 1, Ch. 80, L. 1967; R.C.M. 1947, 11-3516.

7-3-1324. Alteration of contracts. When it becomes necessary in the opinion of the manager to make alterations or modifications in any contract entered into by the municipality, such alterations shall be made only when authorized by the commission upon the written recommendation of the manager. No such alteration shall be valid unless the new price to be paid for any supplies, material, or work under the altered or modified contract shall have been agreed upon in writing and signed by the contractor and the manager prior to such authorization by the commission.

History: En. Sec. 76, Ch. 121, L. 1923; re-en. Sec. 5520.77, R.C.M. 1935; R.C.M. 1947, 11-3517.

7-3-1325 through 7-3-1330 reserved.

7-3-1331. Department of public works. (1) The department of public works is in the charge of a director, who shall manage and have charge of the construction, repair, improvement, and maintenance of all public buildings; of roads, streets, alleys, sidewalks, bridges, viaducts, and other public ways; of sewers, drains, ditches, culverts, streams, and watercourses; and of boulevards, parks, playgrounds, cemeteries, and other public places and grounds dedicated to public use. He shall manage and control all public cemeteries, crematories, market places or houses, garbage and sewage disposal plants and farms, and all public utilities belonging to the municipality or any subdivision thereof and shall have charge of the enforcement of the obligations to the municipality of all privately owned or operated public utilities enforceable by the municipality. He shall have charge of the cleaning, sprinkling, and lighting of the streets and the collection and disposal of garbage and waste. He shall also be responsible for the making and preservation of all surveys, maps, plans, drawings, and estimates for such public work and for the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the functions of the department.

(2) The director of public works shall have the qualifications prescribed by law for county surveyors, and in addition to the duties required by this part or part 12 and by the ordinances of the municipality, he shall have the powers and shall, either in person or by a deputy having the qualifications prescribed by law for county surveyors, perform the duties required of county surveyors by the laws of the state.

History: (1)En. Sec. 78, Ch. 121, L. 1923; re-en. Sec. 5520.79, R.C.M. 1935; Sec. 11-3519, R.C.M. 1947; (2)En. Sec. 79, Ch. 121, L. 1923; re-en. Sec. 5520.80, R.C.M. 1935; Sec. 11-3520, R.C.M. 1947; R.C.M. 1947, 11-3519, 11-3520; amd. Sec. 12, Ch. 262, L. 1979.

7-3-1332. Public works and improvements. (1) Any local public work may be done or any local public works or improvements may be constructed, reconstructed, repaired, maintained, or operated, either by contract or directly by the municipality, as may be determined by the commission. Before authorizing that any local public works or improvements be directly constructed, reconstructed, repaired, maintained, or operated, detailed plans and estimates for each such work or improvement shall be submitted to the commission by the manager, and there shall be separate accounting for each work or improvement so executed.

(2) The municipality shall have the same power and authority to create special improvement districts and for like purposes and to create special

lighting districts and sprinkling districts as provided by the laws of the state for cities and towns.

(3) The director of public works shall be the engineer in charge of all such work, works, or improvements. The provisions of the general law of the state regarding special improvement districts, special lighting districts, and sprinkling districts in cities and towns shall apply to and control the establishment under this part of special improvement districts, special lighting districts, and sprinkling districts in and for the municipality and the procedure according to which any local public work or the construction, reconstruction, repair, maintenance, or operation of any local public work or improvement is to be provided for when the cost thereof is to be paid in whole or in part by assessments upon the property within any such district, and such general law shall also apply to the manner of levying and collecting such assessments.

History: (1)En. Sec. 86, Ch. 121, L. 1923; re-en. Sec. 5520.87, R.C.M. 1935; Sec. 11-3527, R.C.M. 1947; (2)En. Sec. 87, Ch. 121, L. 1923; re-en. Sec. 5520.88, R.C.M. 1935; Sec. 11-3528, R.C.M. 1947; (3)En. Sec. 88, Ch. 121, L. 1923; re-en. Sec. 5520.89, R.C.M. 1935; Sec. 11-3529, R.C.M. 1947; R.C.M. 1947, 11-3527, 11-3528, 11-3529.

7-3-1333 through 7-3-1340 reserved.

7-3-1341. Department of law. (1) The department of law is in the charge of a director to be appointed by the commission without definite term, who shall be a resident and elector of the municipality and who shall possess all of the qualifications required of county attorneys.

(2) He shall have all the powers and, either personally or by such assistants as he may designate, shall perform all the duties that are prescribed for county attorneys, city attorneys, and public administrators, and in addition thereto, he shall be chief legal adviser of and attorney and counsel for the municipality and of all departments and offices thereof and shall perform such other duties as may be required by the commission.

(3) He shall qualify by taking the oath of office prescribed by the constitution and giving a bond in the amount required of a public administrator in a county of the same class. He shall receive from the state as part of his salary the same amount which is paid by the state to county attorneys in counties of the same class, and the remainder of his salary shall be paid by the municipality. For all purposes in connection with criminal prosecutions he shall be known and designated as "county attorney of the city and county of .....".

History: En. Sec. 44, Ch. 121, L. 1923; re-en. Sec. 5520.44, R.C.M. 1935; R.C.M. 1947, 11-3444; amd. Sec. 13, Ch. 262, L. 1979.

7-3-1342. City court. (1) A city court is established in and for each municipality, with the jurisdiction, powers, and duties within the municipality provided by general law for city courts in cities and towns and for justices of the peace.

(2) The commission shall by ordinance determine the number of judges required for operation of the city court. City court judges are to be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled general election. The term of office for city judge is 4 years.

(3) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(4) Whenever a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term. The compensation of the city judge or judges shall be fixed by the commission.

History: En. Sec. 85, Ch. 121, L. 1923; re-en. Sec. 5520.86, R.C.M. 1935; R.C.M. 1947, 11-3526; amd. Sec. 14, Ch. 262, L. 1979.

7-3-1343. Police department. (1) The police department is in the charge of a director, who shall be chief of the police force of the municipality. The director shall have the powers and perform the duties conferred on and required of sheriffs.

(2) Officers and patrolmen of the police department, subordinate to the director, have the powers and duties conferred on and required of police officers and patrolmen in cities and towns by the laws of this state and such powers and duties as may be conferred and required by the ordinances of the municipality. Police officers and patrolmen have the powers and duties conferred on and required of deputy sheriffs by the general laws of the state.

(3) For the purpose of serving and making return on all criminal and civil process, executing judgments, decrees, and orders of court, and making sales thereunder and returns thereof, the director shall be known and designated as Sheriff of the city and county of ...., and each police officer and patrolman shall be known and designated as deputy sheriff.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 15, Ch. 262, L. 1979.

7-3-1344. Prior rights of law enforcement officers. (1) Any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 has the same job tenure rights as though no such election and qualification had taken place.

(2) Any such police officer who has vested rights in a police retirement fund shall maintain prior vested rights in the fund upon its transfer to a consolidated county municipality. Any police retirement fund established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12 shall be continued as such for the police department of the municipality, subject, however, to the prior vested rights of any police officer employed by any police department or departments established as required by law in any city or town of the county prior to the election and qualification of a commission under this part and part 12. The board of trustees of such police retirement fund shall consist of the president, the director of finance, the director of law, and two members of the police department from the active list of the police officers of the municipality who shall be selected by a majority vote of the members of the police department on the active list of the municipality. The selection shall be made between May 1 and May 10 each year, and the active police officer members of the board shall serve overlapping 2-year terms. Except as provided in this section, the police retirement fund shall be continued and administered in the manner prescribed by law for such funds established in cities and towns.

History: En. Sec. 77, Ch. 121, L. 1923; re-en. Sec. 5520.78, R.C.M. 1935; amd. Sec. 1, Ch. 190, L. 1961; R.C.M. 1947, 11-3518(part); amd. Sec. 1, Ch. 114, L. 1979.

7-3-1345. Fire department. (1) The fire department of the municipality is in the charge of a director, who shall be chief thereof and who shall manage and control the department in the manner prescribed by the ordinances of the municipality.

(2) (a) Notwithstanding any other provision of law, the adoption of a consolidated county municipal government shall have no effect on the existence, rights, or duties of any voluntary fire department or fire district created and legally in existence pursuant to the provisions of parts 21 and 23 of chapter 33.

(b) Nothing in this part or part 12 shall be construed to prohibit the creation of voluntary fire departments or fire districts pursuant to the provisions of parts 21 and 23 of chapter 33 within consolidated county municipalities.

(c) Voluntary fire departments or fire districts within consolidated county municipalities may only be organized, created, supported, financed, dissolved, and managed and their boundaries may only be changed pursuant to the provisions of parts 21 and 23 of chapter 33. These organizations may enter mutual aid agreements as provided by 7-33-2108.

History: En. Sec. 82, Ch. 121, L. 1923; re-en. Sec. 5520.83, R.C.M. 1935; amd. Sec. 1, Ch. 191, L. 1961; amd. Sec. 2, Ch. 2, L. 1965; R.C.M. 1947, 11-3523; amd. Sec. 16, Ch. 262, L. 1979.

7-3-1346. Department of health. The director of the department of health shall be a physician legally authorized to practice medicine and surgery in Montana. Except as otherwise provided in this part or part 12, the director of the department of health shall have the powers and perform the duties conferred on and required of coroners and county health officers and local health officers by the general laws of the state. He shall also have such other powers and perform such other duties as may be prescribed by ordinance.

History: En. Sec. 80, Ch. 121, L. 1923; re-en. Sec. 5520.81, R.C.M. 1935; R.C.M. 1947, 11-3521.

7-3-1347. County board of health. (1) The commission shall be the county board of health in and for the municipality, but in performing the duties and exercising the powers prescribed by law for such boards, the commission shall act by ordinance, resolution, or vote and according to the procedure prescribed by this part and part 12 to be followed when acting as commission of the municipality. It shall not be necessary to the validity of any such action for the commission to declare or for the records thereof to indicate that it is acting in other than its usual capacity.

(2) Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed may be prescribed by ordinance and enforced as provided therein.

History: En. Sec. 81, Ch. 121, L. 1923; re-en. Sec. 5520.82, R.C.M. 1935; R.C.M. 1947, 11-3522.

7-3-1348. Superintendent of schools. The commission shall, by majority vote of all its members, appoint a municipal superintendent of schools to serve without definite term but subject to removal at the pleasure of the commission. The superintendent of schools for any district within the municipality may, with the consent of the trustees of such district, be appointed to serve as municipal superintendent. The compensation of the municipal superintendent shall be fixed by the commission, and he shall have the powers and perform the duties prescribed for county superintendents of schools by the laws of the state.

History: **En. Sec. 84, Ch. 121, L. 1923; re-en. Sec. 5520.85, R.C.M. 1935; R.C.M. 1947, 11-3525.**

Parts 14 through 20 reserved

Part 21

Optional Forms of County Government

7-3-2101. Authorization for optional form of county government. The electors of any county may adopt an alternative form of county government authorized by the provisions of this part. Upon adoption as provided by such part, said alternative form of government shall take the place of the form of government then existing in such county, and the sections of this part applicable to the adopted alternative form of government shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

History: **En. Sec. 2, Ch. 123, L. 1973; R.C.M. 1947, 16-5001.**

7-3-2102. Optional forms. An optional form of county government shall include:

(1) the elected county official form;
(2) the county commissioner form;
(3) the manager form; and
(4) the elected county executive form.

History: **En. Sec. 3, Ch. 123, L. 1973; R.C.M. 1947, 16-5002.**

7-3-2103. Procedure to select optional form — election required. (1) The board of county commissioners of any county may, by a two-thirds vote of the board, or shall, within 30 days, upon receipt of a petition signed by 15% of the electors of the county as determined by the number of votes cast therein for the office of governor at the last preceding gubernatorial election, by resolution submit in a referendum to the electors of the county the question of adopting a new form of county government authorized by this part.

(2) If more than one optional form of county government is presented to the county commissioners by petition, a primary election shall be held to determine the form to be submitted to the electors in a referendum.

(3) It shall be the duty of the board of county commissioners to submit the question at the next regular election or call a special election for the purpose. If a special election is called, it shall be held not more than 90 days or less than 60 days from the passage of the resolution, but not within 30 days of any general election.

(4) The question submitted shall be worded: "Shall the county of .... adopt the form of county government known as the .... (name of form) .... form."

History: **En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(part).**

7-3-2104. Notice of election. It is the duty of the board of county commissioners to publish a notice of the referendum in a daily newspaper twice a week for a period of 3 consecutive weeks or, in case there is no daily newspaper of wide circulation in the county, then in a weekly newspaper for 4 consecutive weeks.

History: En. Sec. 4, Ch. 123, L. 1973; R.C.M. 1947, 16-5003(2); amd. Sec. 17, Ch. 262, L. 1979.

7-3-2105. Effect of vote of approval or disapproval. (1) If a majority of the votes cast on the question of adopting an optional form of county government is in the affirmative, it shall go into effect at a date designated in the petition or resolution; provided that no elected official then in office whose position will no longer be filled by popular election shall be retired prior to the expiration of his term of office, but from and after the establishment of the optional form of county government, his duties shall be such duties as are assigned to him by the person or body administering the optional form of government.

(2) If a majority of the voters disapprove, the existing form shall be continued and no new referendum may be held during the next 2 years following the date of disapproval.

History: En. Sec. 5, Ch. 123, L. 1973; R.C.M. 1947, 16-5004.

7-3-2106. Procedure to discontinue or change optional form. A proposition to discontinue an optional form of county government established under this part or to adopt another optional form of county government pursuant to this part may be submitted to the electors of the county at any general election in the manner provided for the submission of an optional form of county government under 7-3-2103 and 7-3-2104.

History: En. Sec. 6, Ch. 123, L. 1973; R.C.M. 1947, 16-5005.

7-3-2107. Effect of adoption or discontinuance of optional form. (1) The adoption or discontinuance of an optional form of county government in any county, as provided in this part, shall not affect any act done, ratified, or affirmed or any contract or other right or obligation, other than contracts for personal services, accrued or established or any action, prosecution, or proceeding, civil or criminal, pending at the time such change in form of government takes effect; nor shall the adoption or discontinuance of such form of county government affect such causes of action, prosecutions, or proceedings existing at the time it takes effect. Such rights shall attach to and actions, prosecutions, or proceedings may be prosecuted and continued or instituted and prosecuted against, by, or before the department having jurisdiction or power of the subject matter to which such action, prosecution, or proceedings pertains. All rules and orders lawfully promulgated prior to such adoption shall continue in force and effect until amended or rescinded in accordance with the sections of this part.

(2) On the effective date of the adoption or discontinuance of an optional form of county government causing a transfer of rights, duties, and powers from one department or office to another, all books, records, papers, documents, real and personal property, funds, appropriations and balances of appropriations, and pending business in any way pertaining to such rights, powers, and duties shall be similarly transferred.

History: En. Sec. 7, Ch. 123, L. 1973; R.C.M. 1947, 16-5006.

7-3-2108. Board of county commissioners required. (1) Any optional form of county government shall include a board of county commissioners, elected either at large as provided in 7-3-2109 or by districts as provided in 7-3-2110. The method of election shall be determined by inclusion of the method in the optional form adopted pursuant to 7-3-2102.

(2) The board shall consist of such number of members as shall be determined by inclusion of either three or five members in the optional form adopted pursuant to 7-3-2102.

History: **En. Sec. 8, Ch. 123, L. 1973; R.C.M. 1947, 16-5007.**

7-3-2109. Provisions for board elected at large. (1) Under all optional forms of county government whereby the entire board of county commissioners is elected at large, there shall be a board of county commissioners who shall have the qualifications and shall be nominated and elected as provided by general law except as otherwise provided for in this section.

(2) If the electors of a county approve a proposition to adopt an optional form of county government under this part and thereby adopt a different size board, the change in membership shall be effected as follows:

(a) Whenever the number of members of the board is increased, there shall be elected at the next regular state election following the adoption of such provision a sufficient number of county commissioners to bring the total membership of the board up to the number fixed.

(b) Whenever the number of members of the board is decreased, the optional number of county commissioners adopted under this part shall be effective as to the commissioner with the least time left on his term on the first Monday in January following the next regular state election and, as to the other half of the decrease, on the first Monday in January 2 years later. The latter decrease in board size shall also be determined by the least time left on his term and, should two commissioners have the same amount of term left to serve, then by lot.

(3) The term of office of county commissioners is 6 years except as provided in this section. If the optional form as adopted provides for no change in size of the board of county commissioners, county commissioners shall continue to be elected for 6-year terms.

(4) If the first election under an optional form of county government provided for in this part occurs in a year in which one county commissioner is to be elected under the former law and the optional form as adopted provides for an expansion of the board to five commissioners, there shall be elected for staggered terms two commissioners for a 6-year term and one commissioner for a 4-year term as provided in this part.

History: **En. Sec. 9, Ch. 123, L. 1973; R.C.M. 1947, 16-5008; amd. Sec. 18, Ch. 262, L. 1979.**

7-3-2110. Provisions for board elected by district. (1) Under all optional forms of county government whereby any members of the board of county commissioners are elected by districts, there shall be a board of county commissioners who shall be nominated and elected as provided by general law except as otherwise provided for in this section.

(2) The board shall consist of such number of members as provided in the proposition for the optional form that has been adopted.

(3) The division of the county into districts for county commissioners shall conform to the constitutional standards for division of the state into

districts for election of members of the legislature. If the proposition for the optional form adopted provides that the county commissioners shall be elected by districts, the board of county commissioners shall, commencing in the first election under an optional form of county government, divide the county into county commissioner districts, using the most recent decennial federal census. The districts shall be reapportioned as soon as possible after each decennial federal census becomes available.

History: **En. Sec. 10, Ch. 123, L. 1973; R.C.M. 1947, 16-5009.**

7-3-2111. Organization of board. The board of county commissioners shall organize on the first Monday of each year, except when the first Monday of the year falls on a holiday, then the board shall organize on the first Tuesday of each year, by the election of one of its members as chairman. The chairman must preside at all meetings of the board, and in case of his absence or inability to act, the members present must by an order select one of their number to act as chairman temporarily. Any member of the board may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: **En. Sec. 12, Ch. 123, L. 1973; R.C.M. 1947, 16-5011.**

7-3-2112. Conduct of board business. (1) The board of county commissioners shall determine its own rules and order of business and cause a record of its proceedings to be kept.

(2) No action of the board shall be valid or binding unless adopted by the affirmative vote of a majority of the members elected to the board.

History: **En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).**

7-3-2113. Open meetings and records. All meetings of the board must be public, and the books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge.

History: **En. Sec. 11, Ch. 123, L. 1973; R.C.M. 1947, 16-5010(part).**

7-3-2114. Exercise of powers. The powers of a county as a body politic and corporate shall be vested in a board of county commissioners and exercised in the manner provided in this part.

History: **En. Sec. 13, Ch. 123, L. 1973; R.C.M. 1947, 16-5012.**

7-3-2115. Specific powers and duties of board. The board of county commissioners shall:

(1) be the policy determining body of the county and, except as otherwise provided by law, shall be vested with all the powers of the county, including power to levy taxes and to appropriate funds;

(2) have the power to create, organize, alter, consolidate, or abolish administrative units and transfer and assign their functions, powers, and duties;

(3) have all powers and duties vested in or imposed upon it by the general law except as otherwise provided for in this part;

(4) provide for the borrowing of money in anticipation of the collection of taxes and revenues for the current fiscal year;

(5) acquire, construct, maintain, administer, rent, and lease property, including buildings and other public improvements, as provided by law;

(6) cooperate with or join by contract pursuant to this part any city, county, state, or political subdivision or agency thereof or the United States or any agency thereof for the planning, development, construction, acquisition, or operation of any public improvement or facility or for a common service and may provide the terms upon which the county shall perform any of the services and functions of any municipality or political subdivision in the county;

(7) accept, in the name of the county, gifts, devises, bequests, and grants-in-aid from any person, firm, corporation, city, county, state, or political subdivision or agency thereof or from the United States or any agency thereof;

(8) request periodic or special reports by the county executive, county manager, elected officers, and administrative officers and bodies and may require their attendance upon its meetings;

(9) designate the maximum number of assistants, deputies, clerks, and other persons that may be employed in each of the offices and departments of the county;

(10) authorize the county executive or manager to employ experts and consultants in connection with the administration of the affairs of the county;

(11) establish procedures governing the making of county contracts and the purchasing of county supplies and equipment by competitive bidding;

(12) exercise control over expenditures by all county officials and promulgate and execute an allotment schedule allocating annual appropriations for any county government purpose by item on either a monthly or quarterly basis;

(13) by ordinance or resolution make any rule or act in any manner provided by general law.

History: **En. Sec. 14, Ch. 123, L. 1973; R.C.M. 1947, 16-5013.**

7-3-2116. Performance of duties in absence of county executive or manager. In case of absence or disability of the county executive or manager, as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board designates by resolution.

History: **En. Sec. 21, Ch. 123, L. 1973; R.C.M. 1947, 16-5018.**

7-3-2117. Procedure to establish compensation for officers and employees. (1) The board of county commissioners shall establish a schedule of compensation for officers and employees, which shall provide uniform compensation for like service, and such compensation shall be commensurate with and comparable to the compensation for a like service in commercial business. The schedule of compensation may establish a minimum and maximum for any class, and an increase in compensation, with the limits provided for by any class, may be granted at any time by the county manager, county executive, or other appointing authority upon the basis of efficiency and seniority records. None of the provisions of the law of this state with regard to the appointment or compensation of deputy county officers shall apply hereto.

(2) In the manager plan, the compensation of the county manager shall be fixed by the board of county commissioners.

(3) In the elected county executive plan, the compensation of the county executive shall be fixed by the board of county commissioners 1 year prior

to the county executive's term of office. In the first year after adopting the county executive form of county government, the compensation for the county executive shall be 150% of that amount established for a member of the board of county commissioners in that county, figured on the basis of the commissioners working full time.

History: **En. Sec. 22, Ch. 123, L. 1973; R.C.M. 1947, 16-5019.**

7-3-2118 through 7-3-2130 reserved.

7-3-2131. Elected county official form. (1) The elected county official form of county government shall be that form in which the government is administered by a board of county commissioners and the following subordinate officials may be elected: a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a county auditor, a coroner, and a public administrator.

(2) There may be modification of the elected county official form adopted as provided in this section. The number of elected officials may vary by the right of the commissioners to consolidate or combine any two or more offices to cooperate with other units of local government in the sharing of any official.

(3) All the general laws of the state of Montana concerning this form of county government shall apply to the elected county official form of county government except as provided for in this part.

History: **En. Sec. 15, Ch. 123, L. 1973; R.C.M. 1947, 16-5014.**

7-3-2132. County commissioner form. The county commissioner form of county government shall be that form in which the government is administered by a board of county commissioners. The county commissioners may appoint those county officials as may be necessary for county operations and establish an adequate compensation plan for the duties required of each official. Those officials shall be appointed with regard to merit only and need not be a resident of the county prior to the time of their appointment. Under this form of county government, the board shall have the power to create, organize, alter, consolidate, or abolish administrative units of county government and transfer and assign their functions, powers, and duties.

History: **En. Sec. 18, Ch. 123, L. 1973; R.C.M. 1947, 16-5015.**

7-3-2133. Manager form. (1) The board of county commissioners may appoint a county manager, who shall be the administrative head of the county government which the board has the authority to control. He shall be appointed with regard to merit only, and he need not be a resident of the county at the time of his appointment. In lieu of the appointment of a county manager, the board may impose and confer upon the chairman of the board the duties and powers of a manager, as hereinafter set forth, and under such circumstances, said chairman shall be considered a full-time chairman; or the board may impose and confer such powers and duties upon any other officer or agent of the county who may be sufficiently qualified to perform such duties, and the compensation paid to such officer or agent may be revised or adjusted in order that it may be adequate compensation for all the duties of his office. The term "manager" herein used shall apply to such chairman, officer, or agent in the performance of such duties.

(2) It shall be the duty of the county manager:

(a) to see that all orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

History: En. Sec. 19, Ch. 123, L. 1973; R.C.M. 1947, 16-5016.

7-3-2134. Elected county executive form. (1) The elected county executive form of government shall be that form in which the government is administered by a single county official elected at large by the qualified voters of the county. The elected county executive shall be elected in the same manner as the other county officials. The board of county commissioners shall act as the legislative body of the county under this form of county government. The elected county executive shall be responsible for the administration of all departments of the county government. Qualifications for the office of elected county executive shall be the same as those for the board. Compensation for the elected county executive shall be established by the board, commensurate with and comparable to the compensation for a like service in commercial business.

(2) It shall be the duty of the elected county executive:

(a) to see that all the orders, resolutions, and regulations of the board are faithfully executed;

(b) to attend all the meetings of the board and recommend such measures for adoption as he may deem expedient;

(c) to make reports to the board from time to time upon the affairs of the county and to keep the board fully advised as to the financial condition of the county and its future financial needs;

(d) to appoint, with the approval of the board, such subordinate officers, agents, and employees for the general administration of county affairs as considered necessary; and

(e) to perform such other duties as may be required of him by the board.

(3) The powers of the elected county executive shall include the power to veto any ordinance or resolution adopted by the board of county commissioners. A veto by the county executive may apply to all or any items of an ordinance appropriating money. Certification of a veto must be made by the county executive within 10 days of its adoption by the board, and the board may override the veto by a two-thirds vote of all its members. Under the elected executive plan, an ordinance or resolution shall become effective upon approval by the county executive, expiration of such 10 days without approval or veto, or the overriding of a veto.

History: En. Sec. 20, Ch. 123, L. 1973; R.C.M. 1947, 16-5017.

Parts 22 through 40 reserved

Part 41

Strong Mayor Municipal Government

7-3-4101. Strong mayor form of municipal government. (1) The qualified electors of any city or town in this state may, in the manner provided in part 42 of chapter 5, cause an ordinance to be adopted which has as its subject the vesting of any or all of the following powers with the office of mayor of such city or town:

(a) to appoint and remove, without consent of the council, all nonelective officers of the city or town;

(b) to exercise absolute control over all departments and divisions of the city or town created in this title or that may be created by the council;

(c) to appoint one or more administrative assistants to assist him in the direction of the operations of the various city departments and agencies;

(d) to be solely responsible for the preparation of the annual budget in compliance with the procedures set forth in part 42 of chapter 6;

(e) to appoint a budget and finance director whose functions shall include the preparation of the annual municipal budget under the direction of the mayor.

(2) If any ordinance duly adopted in accordance with this section is in conflict with 7-4-4114, 7-4-4303 through 7-4-4306, 7-5-4102(1), 7-5-4122, 7-5-4205, and 7-5-4206, the provisions of this section shall prevail.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

7-3-4102. Relationship of administrative assistants and budget and finance director to mayor. (1) The administrative assistants shall be answerable solely to the mayor.

(2) The budget and finance director shall be answerable solely to the mayor and shall serve at his pleasure.

History: En. 11-802.1 by Sec. 1, Ch. 359, L. 1973; R.C.M. 1947, 11-802.1(part).

Part 42

Municipal Commission Government

7-3-4201. Definitions. In the construction of this part, the following rules shall be observed unless such construction would be inconsistent with the manifest intent or repugnant to the context of the statute:

(1) The words "councilman" or "alderman" shall be construed to mean "councilman" when applied to cities under this part.

(2) When an office or officer is named in any law referred to in this part, it shall, when applied to cities under this part, be construed to mean the office or officer having the same function or duties under the provisions of this part or under ordinances passed under authority thereof.

(3) The words "franchise" or "right" shall include every special privilege in the streets, highways, and public places of the city, whether granted by

the state or the city, which does not belong to citizens generally by common right.

(4) The word "electors" shall be construed to mean persons qualified to vote for elective offices at regular municipal elections.

History: En. Sec. 28, Ch. 57, L. 1911; re-en. Sec. 5393, R.C.M. 1921; re-en. Sec. 5393, R.C.M. 1935; R.C.M. 1947, 11-3131.

7-3-4202. Authorization for commission form of municipal government. Any city may abandon its organization and reorganize under the provisions of this part by proceeding as hereinafter provided.

History: En. Sec. 1, Ch. 57, L. 1911; re-en. Sec. 5366, R.C.M. 1921; re-en. Sec. 5366, R.C.M. 1935; R.C.M. 1947, 11-3101.

7-3-4203. Effect of part on other local government laws. All acts and parts of acts and all laws, not inconsistent with any of the provisions of this part, now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part except insofar as the same may be in conflict or inconsistent with the provisions of this part.

History: En. Sec. 34, Ch. 57, L. 1911; re-en. Sec. 5399, R.C.M. 1921; re-en. Sec. 5399, R.C.M. 1935; R.C.M. 1947, 11-3137.

7-3-4204. Laws governing city. All laws governing cities of the first, second, and third classes and not inconsistent with the provisions of this part shall apply to and govern cities organized under this part. All bylaws, ordinances, and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of this part.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).

7-3-4205. City to be governed by mayor and councilmen. Every city shall be governed by a mayor and councilmen, as provided in 7-3-4215, each of whom shall have the right to vote on all questions coming before the council.

History: En. Sec. 15, Ch. 57, L. 1911; re-en. Sec. 5380, R.C.M. 1921; re-en. Sec. 5380, R.C.M. 1935; R.C.M. 1947, 11-3117.

7-3-4206. Territorial limits and property. The territorial limits of such city shall remain the same as under the former organization, and all rights and property of every description which were vested in any such city under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part.

History: En. Sec. 8, Ch. 57, L. 1911; re-en. Sec. 5373, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; R.C.M. 1947, 11-3108(part).

7-3-4207. Requirements of petitions. Petitions provided for in this part shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides and his length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city stating that the signers thereof were, at the time of signing, legal voters of said city and the number of signers at the time the affidavit was made.

History: En. Sec. 33, Ch. 57, L. 1911; re-en. Sec. 5398, R.C.M. 1921; re-en. Sec. 5398, R.C.M. 1935; amd. Sec. 2, Ch. 105, L. 1951; R.C.M. 1947, 11-3136.

7-3-4208. Petition to organize under commission form — election required. (1) Upon a petition being filed with the city council, signed by not less than 25% of the qualified electors of such city registered for the last preceding general city election, praying that the question of reorganization under this part be submitted to the qualified electors of such city, said city council shall thereupon and within 30 days thereafter order a special election to be held. At this election the question of reorganization of such city under the provisions of this part shall be submitted to the qualified electors of such city.

(2) Such order of the city council shall specify therein the time when such election shall be held, which must be within 90 days from the date of the filing of such petition.

History: En. Sec. 2, Ch. 57, L. 1911; amd. Sec. 1, Ch. 2, L. 1915; re-en. Sec. 5367, R.C.M. 1921; re-en. Sec. 5367, R.C.M. 1935; R.C.M. 1947, 11-3102.

7-3-4209. Proclamation and notice of election. Upon the city council ordering such special election to be held, the mayor of such city shall issue a proclamation setting forth the purpose for which such special election is called and the date of holding such special election. The proclamation shall be published for 10 consecutive days in each daily newspaper published in said city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and such proclamation shall also be posted in at least five public places within such city.

History: En. Sec. 3, Ch. 57, L. 1911; re-en. Sec. 5368, R.C.M. 1921; re-en. Sec. 5368, R.C.M. 1935; R.C.M. 1947, 11-3103.

7-3-4210. Form of ballot. At such election the ballots to be used shall be printed upon plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the city of .... the question of reorganization of the city of .... under Chapter 57, Laws of 1911" and shall be substantially in the following form:

☐ FOR reorganization of the city of .... under chapter 57, Laws of 1911.

☐ AGAINST reorganization of the city of .... under chapter 57, Laws of 1911.

History: En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).

7-3-4211. Conduct of election. Such election shall be conducted and vote canvassed and result declared in the same manner as provided by law in respect to other city elections.

History: En. Sec. 4, Ch. 57, L. 1911; re-en. Sec. 5369, R.C.M. 1921; re-en. Sec. 5369, R.C.M. 1935; R.C.M. 1947, 11-3104(part).

7-3-4212. Effect of vote on question. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such city within a period of 2 years thereafter.

History: En. Sec. 5, Ch. 57, L. 1911; re-en. Sec. 5370, R.C.M. 1921; re-en. Sec. 5370, R.C.M. 1935; R.C.M. 1947, 11-3105.

7-3-4213. Election for first city officers. (1) If a majority of the votes cast at such election shall be in favor of such proposition, the city council must, at its first regular meeting held thereafter, order a special election to be held for the purpose of electing a mayor and the number of councilmen to which such city shall be entitled. The order shall specify the time of holding such election, which must be within 90 days after the making of said order, and the mayor shall thereupon issue a proclamation setting forth the purposes for which such special election is called and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such city if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein; and a copy thereof shall also be posted at each voting place within said city and also in at least 10 of the most public places in said city.

(2) Such election shall be conducted, the vote canvassed, and result declared in the same manner as provided by law in respect to other city elections.

History: (1)En. Sec. 6, Ch. 57, L. 1911; amd. Sec. 2, Ch. 2, L. 1915; re-en. Sec. 5371, R.C.M. 1921; re-en. Sec. 5371, R.C.M. 1935; Sec. 11-3106, R.C.M. 1947; (2)En. Sec. 7, Ch. 57, L. 1911; re-en. Sec. 5372, R.C.M. 1921; re-en. Sec. 5372, R.C.M. 1935; Sec. 11-3107, R.C.M. 1947; R.C.M. 1947, 11-3106, 11-3107.

7-3-4214. First term of office. (1) The mayor and councilmen elected at such special election shall qualify and their terms of office shall begin on the first Monday after their election. The terms of office of the mayor and councilmen or aldermen in such city in office at the beginning of the term of office of the councilmen first elected under the provisions of this part shall then cease and determine, and the terms of office of all their appointed officers in force in such city, except as hereinafter provided, shall cease and determine as soon as the council shall by resolution declare.

(2) The terms of office of the mayor and all councilmen elected at such special election shall expire on the first Monday in January of the first even-numbered year following their election. At the first regular city election held in the year prior to the year in which the terms of office of the mayor and councilmen elected at such special election shall expire, a mayor and two councilmen shall be elected in cities having a population of less than 25,000. The mayor elected at such first general city election shall hold office for 4 years, one of the councilmen elected at such first city election shall hold office for 2 years, and the other of such councilmen elected at such first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election. A mayor and four councilmen shall be elected in cities having a population of 25,000 or more, and the mayor elected at such first general city election shall hold office for 4 years. Two of the councilmen elected at such first general city election shall

hold office for 2 years, and the other two of the councilmen elected at such first general city election shall hold office for 4 years, beginning with the first Monday in January of the year following their election.

(3) The councilmen elected at the first general city election shall decide by lot, in such manner as they may select, which thereof shall hold the office of councilman the term of which expires 2 years thereafter and which thereof shall hold the office of councilman the term of which expires 4 years thereafter.

History: En. Secs. 10, 11, Ch. 57, L. 1911; re-en. Secs. 5375, 5376, R.C.M. 1921; re-en. Secs. 5375, 5376, R.C.M. 1935; R.C.M. 1947; 11-3110, 11-3111(part); amd. Sec. 386, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-3-4215. Councilmen and mayor to be elected. (1) In every city of the third class, there shall be a mayor and two councilmen. In every city of the second class, there shall be a mayor and two councilmen. In every city of the first class having a population of less than 25,000, there shall be a mayor and two councilmen. In every city of the first class having a population of 25,000 or more, there shall be a mayor and four councilmen.

(2) The mayor and all councilmen shall be elected at large.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4216. General term of office. The terms of office of the mayor and all councilmen elected after the first term shall be 2 years.

History: En. Sec. 11, Ch. 57, L. 1911; re-en. Sec. 5376, R.C.M. 1921; re-en. Sec. 5376, R.C.M. 1935; R.C.M. 1947, 11-3111(part).

7-3-4217. Oath of office and official bond. Every person who has been declared elected mayor or councilman shall, within 10 days thereafter, take and file with the city clerk an oath of office in the form and manner provided by law and shall execute and give sufficient bond to the municipal corporation in the sum of $10,000, conditioned for the faithful performance of the duties of the office. This bond shall be approved by the judge of the district court of the county in which such city is situated and filed with the clerk and recorder of the county in which such city is situated.

History: En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(9).

7-3-4218. Vacancies. (1) Vacancies in the office of mayor or councilmen shall be filled by appointment made by a majority vote of the remaining members of the council. If in filling such vacancy a tie vote should occur, then the person to fill said vacancy shall be determined by lot in such manner as said council may provide.

(2) A person appointed to fill any such vacancy shall hold his office until the next general election and until his successor is elected and qualified. A person elected to fill a vacancy shall hold office until the expiration of the term for which the person he succeeds was elected.

History: En. Sec. 9, Ch. 57, L. 1911; re-en. Sec. 5374, R.C.M. 1921; re-en. Sec. 5374, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1945; R.C.M. 1947, 11-3109(part).

7-3-4219. Council offices. The council shall have its office at the city hall.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4220. Council meetings. (1) Regular meetings of the council shall be held on the first Monday after the election of councilmen and thereafter at least once each month. The council shall provide by ordinance for the time for holding regular meetings, and special meetings may be called from time to time by the mayor or two councilmen.

(2) All meetings of the council, whether regular or special, at which any person not a city officer is admitted shall be open to the public.

History: En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; R.C.M. 1947, 11-3125(part).

7-3-4221. Conduct of business. (1) (a) In cities having a mayor and two councilmen, the mayor and one councilman or two councilmen shall constitute a quorum and the affirmative vote of the mayor and one councilman or the affirmative vote of two councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(b) In cities having a mayor and four councilmen, the mayor and two councilmen or three councilmen shall constitute a quorum and the affirmative vote of the mayor and two councilmen or the affirmative vote of three councilmen shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part.

(2) Upon every vote the ayes and nays shall be called and recorded. Every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon. Every resolution or ordinance passed by the council must be signed by the mayor or by two councilmen and must be recorded before the same shall be in force.

(3) The mayor shall be president of the council and shall preside at its meetings and shall supervise all departments of the city and report and recommend to the council for its action all matters requiring attention in any department. The council shall, at its first regular meeting, select one of its members for vice-president of the council, and in case of a vacancy in the office of mayor or the absence or inability of the mayor, he shall perform the duties of the mayor.

History: (1), (2)Ap. p. Sec. 16, Ch. 57, L. 1911; re-en. Sec. 5381, R.C.M. 1921; re-en. Sec. 5381, R.C.M. 1935; Sec. 11-3118, R.C.M. 1947; Ap. p. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; Sec. 11-3119, R.C.M. 1947; (3)En. Sec. 22, Ch. 57, L. 1911; re-en. Sec. 5387, R.C.M. 1921; re-en. Sec. 5387, R.C.M. 1935; Sec. 11-3125, R.C.M. 1947; R.C.M. 1947, 11-3118, 11-3119(part), 11-3125(part).

7-3-4222. Adoption of ordinances. (1) Every ordinance or resolution appropriating money, ordering any street improvement or sewer, making or authorizing the making of any contract, or granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the city for any purpose shall be complete in the form in which it is finally passed and remain on file with the city clerk for public inspection at least 1 week before the final passage or adoption thereof.

(2) No ordinance passed by the council, except when otherwise required by the general laws of this state or the provisions of this part and except an ordinance for the immediate preservation of the public peace, health, or safety which contains a statement of its urgency and is passed by a two-thirds vote of the council, shall go into effect before 10 days from the time of its final passage. If during said 10 days a petition signed by electors of the city equal in number to at least 25% of the entire number of persons registered to vote at the last preceding general municipal election, protesting against the passage of such ordinance, be presented to the council, the same shall thereupon be suspended from going into operation, and it shall be the duty of the council to reconsider such ordinance; and if the same is not entirely repealed, the council shall submit the ordinance, as is provided by [7-3-4224(2)(b)], to the vote of the electors of the city, either at a general election or at a special municipal election to be called for that purpose. Such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of [7-3-4224], except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

History: (1)En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R.C.M. 1921; re-en. Sec. 5388, R.C.M. 1935; Sec. 11-3126, R.C.M. 1947; (2)En. Sec. 31, Ch. 57, L. 1911; re-en. Sec. 5396, R.C.M. 1921; re-en. Sec. 5396, R.C.M. 1935; Sec. 11-3134, R.C.M. 1947; R.C.M. 1947, 11-3126(part), 11-3134.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-3-4223. Granting of franchises. No franchise or right to occupy or use the streets, highways, bridges, or public places in any such city shall be granted, renewed, or extended except by ordinance, and every franchise or grant for interurban or street railways, gasworks or waterworks, electric light or power plants, heating plants, telegraph or telephone systems, or other public service utilities or renewal or extension of any such franchise or grant within such city must be authorized or approved by a majority of the electors voting thereon at a general or special election as provided in 7-5-4321 and 7-5-4322.

History: En. Sec. 23, Ch. 57, L. 1911; re-en. Sec. 5388, R.C.M. 1921; re-en. Sec. 5388, R.C.M. 1935; R.C.M. 1947, 11-3126(part).

7-3-4224. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4226. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4227. Abandonment of commission form. (1) Any city which has operated for more than 1 year under the provisions of this part may abandon such organization and accept the provisions of the general law of the state applicable to cities of its population.

(2) Upon the petition of not less than 10% of the electors of the city registered for the preceding general election, the following proposition shall be placed upon the ballot at the next regular city election, provided the petition is filed at least 60 days prior to the date of the election:

"Shall the city of (name of city) abandon its organization under chapter 57 of the acts of the twelfth legislative assembly and become a city under the general law governing cities of like population or, if formerly organized under special charter, resume the special charter?"

(3) If the majority of the votes cast at such election is in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general law of the state for cities of like population, and upon the qualification of these officers, the city shall become a city under the general law of the state, but this change may not in any manner or degree affect the property, rights, or liabilities of any nature of the city but shall merely extend to each change in its form of government.

(4) Whenever the form of government of any city is determined by a vote of the people under the provision of this section, the same question may not be submitted again for a period of 2 years, and any ordinance adopted by a vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: **En. Sec. 32, Ch. 57, L. 1911; amd. Sec. 1, Ch. 128, L. 1913; re-en. Sec. 5397, R.C.M. 1921; re-en. Sec. 5397, R.C.M. 1935; amd. Sec. 1, Ch. 105, L. 1951; R.C.M. 1947, 11-3135; amd. Sec. 20, Ch. 262, L. 1979.**

7-3-4228 through 7-3-4230 reserved.

7-3-4231. General provisions related to elections. (1) All electors of cities under this part who, by ordinances governing cities incorporated under the general municipal incorporation law or by charter, would be entitled to vote for the election of officers at any general municipal election in such cities shall be qualified to vote at all elections under this part.

(2) The ballots to be used at such general municipal election shall be in the same general form as for such primary elections so far as applicable; and in all elections in such cities the election precincts, voting places, method of conducting the elections, canvassing of votes, and announcing the results shall be the same as provided by law for the election of officers in such cities so far as the same are applicable and not inconsistent with the provisions of this part.

History: **En. Sec. 12, Ch. 57, L. 1911; re-en. Sec. 5377, R.C.M. 1921; re-en. Sec. 5377, R.C.M. 1935; amd. Sec. 8, Ch. 535, L. 1975; R.C.M. 1947, 11-3112(8).**

7-3-4232 through 7-3-4241. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4242 through 7-3-4250 reserved.

7-3-4251. Powers of mayor. The mayor shall:

(1) preside at all meetings of the council;

(2) have the same power to vote as other members of the council; and

(3) have no power to veto any measure.

History: **En. Sec. 17, Ch. 57, L. 1911; re-en. Sec. 5382, R.C.M. 1921; re-en. Sec. 5382, R.C.M. 1935; R.C.M. 1947, 11-3119(part).**

7-3-4252. Powers of council. The council shall have and possess and the council and its members shall exercise all executive, legislative, and judicial powers and duties now had, possessed, and exercised by the mayor, city council, board of public works, park commissioners, board of police and fire commissioners, board of waterworks trustees, board of library trustees, attorney, assessor, treasurer, auditor, city engineer, and other executive and administrative offices in cities organized under the general municipal incorporation laws.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part).

7-3-4253. Department structure and operation. (1) The executive and administrative powers, authority, and duties in such cities shall be distributed into and among departments as follows:

(a) in cities having a mayor and two councilmen, into three departments:
(i) a department of accounts, finance, and public property;
(ii) a department of public safety and charity;
(iii) a department of streets, public improvements, and parks;
(b) in cities having a mayor and four councilmen, into five departments:
(i) a department of public affairs;
(ii) a department of accounts and finance;
(iii) a department of public safety and charity;
(iv) a department of street and public improvements;
(v) a department of parks and public property.

(2) The council shall determine the powers and duties to be performed by each department of the city, shall prescribe the powers and duties of officers and employees, may assign particular officers and employees to one or more of the departments, may require an officer or employee to perform duties in two or more departments, and may make such rules as may be necessary or proper for the efficient and economical conduct of the business of the city.

History: En. Sec. 18, Ch. 57, L. 1911; re-en. Sec. 5383, R.C.M. 1921; re-en. Sec. 5383, R.C.M. 1935; R.C.M. 1947, 11-3120(part).

7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two councilmen, the mayor shall be superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor shall be superintendent over the department of public affairs, and the mayor shall have general supervision over all departments of the city and over all matters connected with said city, and the council shall, at its first regular meeting after the election of its members, designate by majority vote one councilman to be superintendent over each department of the city, but such designation may be changed whenever it appears that the public service would be benefited thereby.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance and which may be necessary to

the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the offices the election to which is made by the council and may require any officer elected by the council to perform the duties of any other officer and shall appoint a city judge with the authority now conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department shall be governed by the provisions of 7-33-4106 and 7-33-4122 through 7-33-4124. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council shall have power from time to time to create, fill, and discontinue offices and employment other than herein prescribed, according to their judgment of the needs of the city, and by majority vote of all the members to remove any such officer or employee, except as otherwise provided for in this part, and may by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees.

History: (1), (2)En. Sec. 19, Ch. 57, L. 1911; re-en. Sec. 5384, R.C.M. 1921; re-en. Sec. 5384, R.C.M. 1935; amd. Sec. 1, Ch. 73, L. 1943; Sec. 11-3121, R.C.M. 1947; (3)En. Sec. 20, Ch. 57, L. 1911; re-en. Sec. 5385, R.C.M. 1921; re-en. Sec. 5385, R.C.M. 1935; Sec. 11-3122, R.C.M. 1947; R.C.M. 1947, 11-3121, 11-3122.

7-3-4255. Compensation of mayor, council members, and employees. (1) The total compensation of councilmen shall be as follows:

(a) In cities of the third class having a population of less than 3,000, the annual salary of the mayor shall not exceed $600 and the annual salary of each councilman shall not exceed $500. In cities of the third class having a population of 3,000 or more, the annual salary of the mayor shall not exceed $1,000 and the annual salary of each councilman shall not exceed $900.

(b) In cities of the second class, the annual salary of the mayor shall not exceed $1,650 and the annual salary of each councilman shall not exceed $1,500.

(c) In cities of the first class having a population of less than 30,000, the annual salary of the mayor shall not exceed $4,500 and the annual salary of each councilman shall not exceed $3,800. In cities of the first class having a population of 30,000 and over, the annual salary of the mayor shall not exceed $4,800 and the annual salary of each councilman shall not exceed $4,000.

(2) Any increase in salary occasioned by the advance in class or increase in population of any city shall commence with the month next after the publication of the census showing such advance in class or increase in population.

(3) Every other officer or assistant shall receive such salary or compensation as the council shall by ordinance from time to time provide, payable in equal monthly installments.

(4) The salary or compensation of all other employees of such city shall be fixed by the council and shall be payable monthly or at such shorter periods as the council shall determine.

History: En. Sec. 21, Ch. 57, L. 1911; re-en. Sec. 5386, R.C.M. 1921; re-en. Sec. 5386, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1945; amd. Sec. 1, Ch. 189, L. 1949; amd. Sec. 1, Ch. 87, L. 1951; R.C.M. 1947, 11-3123(part).

7-3-4256. Control of conflict of interest. (1) No officer or employee elected or appointed in any such city shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or materials, supplies, or services to be furnished or performed for the city. No such officer or employee shall be interested, directly or indirectly, in any contract or job for work or materials or the profits thereof or services to be furnished or performed for any person, firm, or corporation operating interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of said city. No such officer or employee shall accept or receive, directly or indirectly, from any person, firm, or corporation operating within the territorial limits of said city any interurban railway, street railway, gasworks, waterworks, electric light or power plant, heating plant, telegraph line, or telephone exchange, or other business using or operating under a public franchise any frank, free pass, free ticket, or free service or accept or receive, directly or indirectly, from any such person, firm, or corporation any other service upon terms more favorable than is granted to the public generally. Such prohibition of free transportation shall not apply to policemen or firefighters in uniform, nor shall any free service to the city officials heretofore provided by any franchise or ordinance be affected by this section. Any officer or employee of such city who, by solicitation or otherwise, shall exert his influence, directly or indirectly, to influence other officers or employees of such city to adopt his political views or to favor any particular person or candidate for office or who shall in any manner contribute money, labor, or other valuable thing to any person for election purposes shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $300 or by imprisonment in the county jail not exceeding 30 days.

(2) Any violation of the provisions of this section shall be a misdemeanor, and every such contract and agreement shall be void.

History: En. Sec. 24, Ch. 57, L. 1911; re-en. Sec. 5389, R.C.M. 1921; re-en. Sec. 5389, R.C.M. 1935; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3127.

7-3-4257. Appointment of civil service commission. (1) Immediately after organizing, the council shall by ordinance appoint three civil service commissioners, who shall hold office, one until the first Monday in April in the second year, one until the first Monday in April of the fourth year, and one until the first Monday in April of the sixth year after his appointment. Each succeeding council shall, as soon as practicable after organizing, appoint one commissioner for 6 years, who shall take the place of a commissioner whose term of office expires. The chairman of the commission for each biennial period shall be the member whose term first expires. No person while on the said commission shall hold or be a candidate for any office of public trust. Two of said members shall constitute a quorum to transact business. The commissioners must be citizens of Montana and residents of the city for more than 3 years next preceding their appointment.

(2) Before entering upon the duties of his office, each of said commissioners shall take and subscribe an oath, which shall be filed and kept in the office of the city clerk, to support the constitution of the United States and of the state of Montana, to obey the laws, to aid to secure and maintain an

honest and efficient force free from partisan distinction or control, and to perform the duties of his office to the best of his ability.

(3) The council may remove any of said commissioners during their term of office for cause, a majority of councilmen voting in favor of such removal, and shall fill any vacancy that shall occur in said commission for the unexpired term. The city council shall provide suitable rooms in which the said civil service commission shall hold its meetings; it shall have a clerk, who shall keep a record of all its meetings, such city to supply the said commission with all necessary equipment to properly attend to such business.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(1) thru (3).

7-3-4258. Civil service examinations. Said commission shall, on the first Monday of April and October of each year or more often if it shall be deemed necessary, under such rules as may be prescribed by the council, hold examinations for the purpose of determining the qualifications of applicants for positions, which examination shall be practical and shall fairly test the fitness of the persons examined to discharge the duties of the position to which they seek to be appointed. Such commission shall, as soon as possible after such examination, certify to the council double the number of persons necessary to fill vacancies, who according to the records have the highest standing for the position they seek to fill as a result of such examination, and all vacancies which occur that come under the civil service prior to the date of the next regular examination shall be filled from said list so certified; provided, however, that should the list for any cause be reduced to less than three for any division, then the council or the head of the proper department may temporarily fill a vacancy, but not to exceed 30 days.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(4).

7-3-4259. Discharge of employees. All persons subject to such civil service examination shall be subject to removal from office or employment by the council for misconduct or failure to perform their duties under such rules as it may adopt, and the chief of police, chief of the fire department, or any superintendent or foreman in charge of municipal work may peremptorily suspend or discharge any subordinate then under his direction for neglect of duty or disobedience of his orders but shall, within 24 hours thereafter, report such suspension or discharge and the reason therefor to the superintendent of his department, who shall thereupon affirm or revoke such discharge or suspension according to the facts. Such employee (or the officer discharging or suspending him) may, within 5 days of such ruling, appeal therefrom to the council, which shall fully hear and determine the matter.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(5).

7-3-4260. Investigatory powers of council. The council shall have the power to enforce the attendance of witnesses and the production of books and papers and the power to administer oaths in the same manner and with like effect and under the same penalties as in the case of magistrates exercising criminal or civil jurisdiction under the statutes of Montana.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(6).

7-3-4261. Conduct of civil service commission business. Said commissioners shall make an annual report to the council, and it may require a special report from said commissioners at any time. Said council may prescribe such rules for the proper conduct of the business of the commission as shall be found expedient and advisable, including restrictions on appointment, promotions, removals for cause, roster of employees, certificates of records to the auditors, and payment to persons improperly employed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(7).

7-3-4262. Nonpartisan appointments and elections. All officers and employees in any said city shall be elected or appointed with reference to their qualifications and fitness and for the good of the public service and without reference to their political faith or party affiliations.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(10).

7-3-4263. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4264. Applicability of civil service provisions. The provisions of 7-3-4257 through 7-3-4265 shall apply to all appointive officers and employees of such city except those especially named in 7-3-4254, commissioners of any kind, laborers whose occupation requires no special skill or fitness, election officials, and mayor's secretary and assistant attorney, where such officers are appointed.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(9).

7-3-4265. Violations of civil service provisions. (1) The council of such city shall have power to pass ordinances imposing suitable penalties for the punishment of persons violating any of the provisions of this part relating to the civil service commission.

(2) It shall be unlawful for any candidate for office in any such city, directly or indirectly, to give or promise any person or persons any office, position, employment, benefit, or anything of value for the purpose of influencing or obtaining the political support, aid, or vote of any person or persons.

(3) Any violation of the provisions of 7-3-4257 through 7-3-4265 shall be a misdemeanor and give ground for the removal from office.

History: En. Sec. 25, Ch. 57, L. 1911; re-en. Sec. 5390, R.C.M. 1921; re-en. Sec. 5390, R.C.M. 1935; R.C.M. 1947, 11-3128(part).

7-3-4266. Report of proceedings and financial statement. The council shall monthly print in pamphlet form a detailed itemized statement of all of the receipts and expenses of the city and a summary of its proceedings during the preceding month and furnish printed copies of the statement to the state library, the city library, the daily newspaper of the city, and persons who apply for the statement at the office of the city clerk.

History: En. Sec. 26, Ch. 57, L. 1911; re-en. Sec. 5391, R.C.M. 1921; re-en. Sec. 5391, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1943; amd. Sec. 55, Ch. 348, L. 1974; R.C.M. 1947, 11-3129.

7-3-4267. Revision of appropriations made by former council. If, at the beginning of the term of office of the first council elected in such city under the provisions of this part, the appropriations for the expenditures of the city government for the current fiscal year have been made, said council shall have power, by ordinance, to revise, repeal, or change said appropriations and to make additional appropriations.

History: En. Sec. 27, Ch. 57, L. 1911; re-en. Sec. 5392, R.C.M. 1921; re-en. Sec. 5392, R.C.M. 1935; R.C.M. 1947, 11-3130.

Part 43

Municipal Commission-Manager Government

7-3-4301. Authorization for commission-manager form of municipal government. (1) Any municipality may abandon its organization and reorganize under the provisions of this part and part 44 by proceeding as hereinafter provided.

(2) The form of government provided for in this part and part 44 shall be known as the commission-manager plan and shall consist of a commission of citizens, who shall be elected at large in the manner hereinafter provided.

History: (1)En. Sec. 1, Ch. 152, L. 1917; re-en. Sec. 5400, R.C.M. 1921; re-en. Sec. 5400, R.C.M. 1935; Sec. 11-3201, R.C.M. 1947; (2)En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; Sec. 11-3211, R.C.M. 1947; R.C.M. 1947, 11-3201, 11-3211(part).

7-3-4302. Construction. (1) Except as otherwise provided in this part and part 44, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations are hereby continued in full force and effect and shall be considered and construed as not repealed by this part and part 44 except insofar as the same may be in conflict or inconsistent with the provisions of this part and part 44.

(2) This part and part 44 do not repeal or modify Title 69, chapter 3 or 69-4-101, and this part and part 44 do not curtail or impair the power or authority of the public service commission, and any order made, action taken, or regulation provided by the commission shall supersede and nullify any order, regulation, ordinance, or other action authorized by this part or part 44 in conflict with any such order, regulation, or action of said public service commission. However, the annual report relating to the operation of a public utility owned by a municipality operating under this part and part 44 to be made to the public service commission shall conform to the fiscal year of the city or town.

History: (1)En. Sec. 118, Ch. 152, L. 1917; re-en. Sec. 5515, R.C.M. 1921; amd. Sec. 19, Ch. 31, L. 1923; re-en. Sec. 5515, R.C.M. 1935; Sec. 11-3331, R.C.M. 1947; (2)En. Sec. 119, Ch. 152, L. 1917; re-en. Sec. 5516, R.C.M. 1921; amd. Sec. 20, Ch. 31, L. 1923; re-en. Sec. 5516, R.C.M. 1935; amd. Sec. 6, Ch. 315, L. 1974; Sec. 11-3332, R.C.M. 1947; R.C.M. 1947, 11-3331, 11-3332.

7-3-4303. Laws governing municipality. (1) All laws governing municipalities of like population and not inconsistent with the provisions of this part and part 44 shall apply to and govern municipalities organized under this part and part 44. All bylaws, ordinances, and resolutions lawfully passed and in force in any such municipality under its organization, not in conflict herewith, shall remain in force until altered or repealed by the commission under the provisions of this part and part 44.

(2) The powers which are conferred and the duties which are imposed upon any officer, board, or commission or department of the municipality under the laws of the state shall, if such officer, board, commission, or department is abolished by this part and part 44, be thereafter exercised and discharged by the officer, board, commission, or department upon whom are imposed corresponding functions, duties, and powers under the provisions of this part and part 44.

History: (1)En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; Sec. 11-3208, R.C.M. 1947; (2)En. Sec. 112, Ch. 152, L. 1917; re-en. Sec. 5509, R.C.M. 1921; re-en. Sec. 5509, R.C.M. 1935; Sec. 11-3325, R.C.M. 1947; R.C.M. 1947, 11-3208(part), 11-3325(part).

7-3-4304. Territorial limits and property. The territorial limits of such municipality shall remain the same as under the former organization, and all rights and property of every description which were vested in any such municipality under its former organization shall vest in the same under the organization herein contemplated, and no right or liability either in favor of or against it, existing at the time and no suit or prosecution of any kind shall be affected by such change unless otherwise provided for in this part or part 44.

History: En. Sec. 8, Ch. 152, L. 1917; re-en. Sec. 5407, R.C.M. 1921; re-en. Sec. 5407, R.C.M. 1935; R.C.M. 1947, 11-3208(part).

7-3-4305. Petition to organize under commission-manager form — election required. (1) Upon a petition being filed with the city or town council, signed by not less than 25% of the qualified electors of such municipality registered for the last preceding general municipal election, praying that the question of reorganization under this part and part 44 be submitted to the qualified electors of such municipality, said city or town council shall thereupon and within 30 days thereafter order a special election to be held, at which election the question of reorganization of such municipality under the provisions of this part and part 44 shall be submitted to the qualified electors of such municipality.

(2) Such order of the city or town council shall specify therein the time when such election shall be held, which must be within 90 days from the date of filing of such petition.

History: En. Sec. 2, Ch. 152, L. 1917; re-en. Sec. 5401, R.C.M. 1921; re-en. Sec. 5401, R.C.M. 1935; R.C.M. 1947, 11-3202.

7-3-4306. Proclamation and notice of election. (1) Upon the city or town council ordering such special election to be held, the mayor of such municipality shall issue a proclamation setting forth the purpose for which such special election is held and the date of holding such special election.

(2) The proclamation shall be published for 10 consecutive days in each daily newspaper published in said municipality if there be such; otherwise, once a week for 2 consecutive weeks in each weekly newspaper published therein. Such proclamation shall also be posted in at least five public places within such municipality.

History: En. Sec. 3, Ch. 152, L. 1917; re-en. Sec. 5402, R.C.M. 1921; re-en. Sec. 5402, R.C.M. 1935; R.C.M. 1947, 11-3203.

7-3-4307. Form of ballot. At such election, the ballots to be used shall be printed on plain white paper and shall be headed "Special election for the purpose of submitting to the qualified electors of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly" and shall be substantially in the following form:

☐ FOR reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

☐ AGAINST reorganization of the (city, town) of (name of city or town) under chapter 152 of the acts of the fifteenth legislative assembly.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4308. Conduct of election. Such election shall be conducted and the vote canvassed and the result declared in the same manner as provided by law in respect to other municipal elections.

History: En. Sec. 4, Ch. 152, L. 1917; re-en. Sec. 5403, R.C.M. 1921; re-en. Sec. 5403, R.C.M. 1935; R.C.M. 1947, 11-3204(part).

7-3-4309. Effect of vote on question of organization. (1) If such proposition is adopted, the mayor shall transmit to the governor, to the secretary of state, and to the county clerk and recorder each a certificate stating that such proposition was adopted.

(2) If such proposition shall not be adopted at such special election, such proposition shall not again be submitted to the electors of such municipality within a period of 2 years from the date of the last submission.

History: En. Sec. 5, Ch. 152, L. 1917; re-en. Sec. 5404, R.C.M. 1921; amd. Sec. 1, Ch. 31, L. 1923; re-en. Sec. 5404, R.C.M. 1935; R.C.M. 1947, 11-3205.

7-3-4310. Special election for municipal officers. (1) If the majority of the votes cast at such election shall be in favor of such proposition, the city or town council must hold a meeting within 1 week thereafter and at such meeting order a special election to be held for the purpose of electing the number of commissioners to which such municipality shall be entitled. This order shall specify the time of holding such election, which must be within 90 days after the making of such order, and the mayor shall thereupon issue a proclamation setting forth the purpose for which such special election is held and the day of holding the same. The proclamation shall be published for 10 successive days in each daily newspaper published in such municipality if there be such; otherwise, for 2 successive weeks in each weekly newspaper published therein, and a copy thereof shall also be posted at each voting place within said municipality and also in five of the most public places in said municipality.

(2) Such election shall be conducted, the vote canvassed, and the result declared in the same manner as provided by law in respect to other municipal elections.

(3) The provisions of [7-3-4345 through 7-3-4347] and [7-3-4349(1)] are specifically to be followed in the special election, except that the date of the primary election shall be at least 30 days before the special election. The provisions of [7-3-4350] shall be applicable to subsection (2).

History: (1)En. Sec. 6, Ch. 152, L. 1917; re-en. Sec. 5405, R.C.M. 1921; amd. Sec. 2, Ch. 31, L. 1923; re-en. Sec. 5405, R.C.M. 1935; Sec. 11-3206, R.C.M. 1947; (2), (3)En. Sec. 7, Ch. 152, L. 1917;

re-en. Sec. 5406, R.C.M. 1921; re-en. Sec. 5406, R.C.M. 1935; amd. Sec. 1, Ch. 161, L. 1973; Sec. 11-3207, R.C.M. 1947; R.C.M. 1947, 11-3206, 11-3207.

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-3-4311. Procedure for multimunicipality organization. (1) Whenever the inhabitants of any community or group of communities in any county, whether separately incorporated in whole or in part or unincorporated, which are situated in such proximity or location with reference to each other as to make single municipal control necessary or desirable, shall desire to be organized into or annexed to an incorporated city or town under the provisions of this part and part 44, the board of county commissioners of such county may or upon the presentation of a petition signed by not less than 25% of the qualified electors in such community or group of communities must issue a proclamation ordering a special election to be held.

(2) At this election the question of the organization of such community or group of communities as a municipality under the provisions of this part and part 44 shall be submitted to the qualified electors within the proposed municipal district. Said proclamation shall specify the time when and the places where such election shall be held, which must be within 90 days from the date of filing such petition, and shall define the boundaries of said proposed municipal district, which shall include all such communities and cities and such additional adjacent territory as shall, in the judgment of the board of county commissioners, provide for future urban growth.

(3) If a majority of the legal voters at said election vote in favor of the organization of such municipal district or in favor of annexation to an incorporated city or town, then the board of county commissioners shall declare the result of said election and immediately thereafter shall give notice for 30 days in a newspaper published within the proposed municipal district or, if none be published therein, by posting notices in six public places within the limits of said district of the time and place or places of holding the first election for commissioners of such municipal district under this law. At such election all electors qualified by the general election laws of the state who have resided within the limits of the municipal district for 6 months are qualified electors. The board of county commissioners must appoint judges and clerks of election and canvass and declare the result thereof. The election must be conducted in the manner prescribed by law for the election of county officers, and the commissioners so elected must qualify in the manner prescribed by law for county officers.

History: En. Sec. 9, Ch. 152, L. 1917; amd. Sec. 1, Ch. 44, L. 1919; re-en. Sec. 5408, R.C.M. 1921; re-en. Sec. 5408, R.C.M. 1935; R.C.M. 1947, 11-3209.

7-3-4312. Effect of organization of communities into single municipal district. (1) Whenever any group of communities shall become a single municipal district under the provisions of this law, the commissioners elected at the first election shall have the same functions and authority and municipal procedure in all respects shall be the same as is provided in this law where single communities, cities, or towns adopt the commission-manager form of government, and the terms of all municipal officers in any prior city or town which may be included in such new municipal district shall in like manner cease and terminate as soon as the commissioners shall by resolution so declare, and the corporate functions and existence of any such prior municipal corporation may in like manner be terminated by said commissioners when the need for the further existence of such prior corporation shall be at an end.

(2) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, such municipal district shall bear the same name as the principal incorporated city or town in such district.

(3) Whenever any group of communities, including one or more incorporated cities or towns, shall become a single municipal district under this law, the corporate property of each such city or town shall become the property of the new municipality, but improvements paid for in whole or in part by special assessments upon abutting property within special improvement districts shall not be deemed municipal property within the meaning of this law to the extent of payments so made. If such prior city or town shall have an unpaid indebtedness, the commissioners of said new municipality elected at the first municipal election shall inventory and appraise or cause to be inventoried and appraised all of such property, and if the amount of the indebtedness of such prior city or town shall exceed the inventory value of the property surrendered to the new municipality by such prior city or town, then the excess of such indebtedness over the inventory value of said property shall be a charge only against the taxable property within the limits of such prior city or town and shall be paid by levy upon such property alone.

History: (1)En. Sec. 121, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5517, R.C.M. 1921; re-en. Sec. 5517, R.C.M. 1935; Sec. 11-3333, R.C.M. 1947; (2)En. Sec. 122, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5518, R.C.M. 1921; re-en. Sec. 5518, R.C.M. 1935; Sec. 11-3334, R.C.M. 1947; (3)En. Sec. 123, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5519, R.C.M. 1921; re-en. Sec. 5519, R.C.M. 1935; Sec. 11-3335, R.C.M. 1947; R.C.M. 1947, 11-3333, 11-3334, 11-3335.

7-3-4313. Powers of municipalities under commission-manager plan. (1) The inhabitants of any municipality coming under the provisions of this part and part 44, as its limits now are or may hereafter be, shall be a body politic and corporate and have a corporate name and as such shall have perpetual succession and may use a corporate seal. Through its duly elected officers, it may sue and be sued; may acquire property in fee simple or lesser interest or estate by purchase, gift, devise, appropriation, lease, or lease with the privilege to purchase for any municipal purpose; may sell, lease, hold, manage, and control such property and make any and all rules, by ordinance or resolution, which may be required to carry out fully all provisions of any conveyance, deed, or will, in relation to any gift or bequest, or the provisions of any lease by which it may acquire property; may acquire, construct, own, lease, and operate and regulate public utilities; may assess, levy, and collect taxes for general and special purposes on all the subjects or objects which the municipality may lawfully tax; may borrow money on the faith and credit of the municipality by the issue or sale of bonds or notes of the municipality; may appropriate money of the municipality for all lawful purposes; may create, provide for, construct, regulate and maintain all things of nature of public works and improvements; may levy and collect assessments for improvement districts and other local improvements; may license and regulate persons, corporations, and associations engaged in any business, occupation, profession, or trade; may define, prohibit, abate, suppress, and prevent all things detrimental to the health, morals, comfort, safety, convenience, and welfare of the inhabitants of the municipality and all nuisances and the causes thereof; may regulate the construction, height, and the material used in all buildings and the maintenance and occupancy thereof; may regulate and control the use, for whatever purpose, of the streets and other public places; may create, establish, abolish, and organize offices and fix the salaries and compensation of all officers and employees; may make and enforce local sanitary and police and other regulations; and may pass such ordinances as may be expedient for maintaining and promoting peace, good government, and welfare of the municipality and for the performance of the functions thereof.

(2) The municipality shall have all powers that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. All such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this part and part 44 or, when not prescribed therein, in such manner as shall be prescribed by the ordinances or resolutions of the commission.

History: En. Sec. 10, Ch. 152, L. 1917; re-en. Sec. 5409, R.C.M. 1921; re-en. Sec. 5409, R.C.M. 1935; R.C.M. 1947, 11-3210.

7-3-4314. Composition and general authority of commission. (1) The commission shall consist of three commissioners for all municipalities having a population of less than 15,000 and five commissioners for all cities having a population of 15,000 or more.

(2) The commission shall constitute the governing body, with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer, to be known as the city manager, and to exercise all powers as hereinafter provided.

History: En. Sec. 12, Ch. 152, L. 1917; re-en. Sec. 5410, R.C.M. 1921; re-en. Sec. 5410, R.C.M. 1935; amd. Sec. 1, Ch. 60, L. 1943; R.C.M. 1947, 11-3211(part).

7-3-4315. Qualifications of commissioners. Members of the commission shall be residents of the city or town and have the qualifications of electors.

History: En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).

7-3-4316. Term of office for commissioners. (1) The commissioners elected at the first election shall qualify and their terms of office shall begin on the first Monday after their election, and the terms of office of the mayor and councilmen or aldermen in such city or town in office at the beginning of the term of office of the commissioners first elected under the provisions of this part and part 44 shall cease and terminate and the terms of office of all their appointed officers and of all of the employees of such city or town shall cease and terminate as soon as the commissioners shall by resolution declare.

(2) All commissioners shall serve for a term of 4 years and until their successors are elected and have qualified, except that at the first election the two candidates having the highest number of votes shall hold office for a period of 4 years less the time elapsed since December 31 of the odd-numbered year last preceding. The terms of office of all other candidates shall expire on December 31 in any odd-numbered year following the special election provided for in this part at which the first commissioners are elected.

History: En. Sec. 13, Ch. 152, L. 1917; re-en. Sec. 5411, R.C.M. 1921; amd. Sec. 3, Ch. 31, L. 1923; re-en. Sec. 5411, R.C.M. 1935; R.C.M. 1947, 11-3212.

7-3-4317. Vacancies. Vacancies in the commission shall be filled by the commission for the remainder of the unexpired term, but any vacancy resulting from a recall shall be filled in the manner provided in such case.

History: En. Sec. 14, Ch. 152, L. 1917; re-en. Sec. 5412, R.C.M. 1921; re-en. Sec. 5412, R.C.M. 1935; R.C.M. 1947, 11-3213.

7-3-4318. Official oath. (1) Every person who has been declared elected commissioner shall, within 10 days thereafter, take and file with the clerk of the commission his oath of office in the form and manner provided by law.

(2) Every officer of the municipality shall, before entering upon the duties of his office, take and subscribe to the constitutional oath of office, to be filed and kept in the office of the commission, that he will in all respects faithfully discharge the duties of his office.

History: (1)En. Sec. 45, Ch. 152, L. 1917; re-en. Sec. 5443, R.C.M. 1921; amd. Sec. 8, Ch. 31, L. 1923; re-en. Sec. 5443, R.C.M. 1935; amd. Sec. 9, Ch. 67, L. 1967; Sec. 11-3244, R.C.M. 1947; (2)En. Sec. 113, Ch. 152, L. 1917; re-en. Sec. 5510, R.C.M. 1921; re-en. Sec. 5510, R.C.M. 1935; amd. Sec. 2, Ch. 7, L. 1973; Sec. 11-3326, R.C.M. 1947; R.C.M. 1947, 11-3244, 11-3326.

7-3-4319. Designation of mayor. (1) The mayor shall be that member of the commission who, at the regular municipal election at which the commissioners were elected, received the highest number of votes. In case two candidates receive the same number of votes, one of them shall be chosen mayor by the remaining members of the commission.

(2) In event of a vacancy in the office of the mayor by the expiration of his term of office, the holdover commissioner having received the highest number of votes shall be the mayor. In the event there is a vacancy in the office of the mayor for any other cause, the remaining members of the commission shall choose his successor for the unexpired term from their own number by lot.

(3) In the event that the commissioner who is acting as mayor shall be recalled, the remaining members of the commission shall select one of their number to serve as mayor for the unexpired term. In the event of the recall of all the commissioners, the person receiving the highest number of votes at the election held to determine their successors shall serve as the mayor.

History: (1), (2)En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; Sec. 11-3245, R.C.M. 1947; (3)En. Sec. 47, Ch. 152, L. 1917; re-en. Sec. 5445, R.C.M. 1921; re-en. Sec. 5445, R.C.M. 1935; Sec. 11-3246, R.C.M. 1947; R.C.M. 1947, 11-3245(part), 11-3246.

7-3-4320. Role of mayor. The mayor shall be the presiding officer, except that in his absence, a president pro tempore may be chosen. The mayor shall exercise such powers conferred and perform all duties imposed upon him by this part and part 44, the ordinances of the municipality, and the laws of the state, except that he shall have no power to veto any measure. He shall be recognized as the official head of the municipality by the courts for the purpose of serving civil processes, by the governor for the purposes of the military law, and for all ceremonial purposes.

History: En. Sec. 46, Ch. 152, L. 1917; re-en. Sec. 5444, R.C.M. 1921; amd. Sec. 9, Ch. 31, L. 1923; re-en. Sec. 5444, R.C.M. 1935; R.C.M. 1947, 11-3245(part).

7-3-4321. Compensation of commissioners and mayor. The salary of each commissioner may be as follows: the salary of each commissioner shall be as established by ordinance in all classes of cities, and the salary of the commissioner acting as mayor may be 1 ½ times that of the other commissioners.

History: En. Sec. 49, Ch. 152, L. 1917; amd. Sec. 2, Ch. 44, L. 1919; re-en. Sec. 5447, R.C.M. 1921; re-en. Sec. 5447, R.C.M. 1935; amd. Sec. 1, Ch. 10, L. 1949; amd. Sec. 1, Ch. 71, L. 1965; amd. Sec. 1, Ch. 289, L. 1969; amd. Sec. 1, Ch. 33, L. 1971; R.C.M. 1947, 11-3248.

7-3-4322. Meetings of commission. (1) At 10 a.m. on the first Monday after January 1 following a regular municipal election, the commission shall meet at the usual place for holding the meetings of the legislative body of the municipality, at which time the newly elected commissioners shall assume the duties of their office. Thereafter, the commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that in municipalities having less than 5,000 inhabitants, they shall meet regularly at least once and not more than four times per month and in municipalities having more than 5,000 inhabitants, they shall meet not less than once every 2 weeks.

(2) Absence from five consecutive regular meetings shall operate to vacate the seat of a member unless such absence be authorized by the commission.

(3) The commissioner acting as mayor, any two members of the commission, or the city manager may call, special meetings of the commission upon at least 12 hours written notice to each member of the commission, served personally on each member or left at his usual place of residence.

History: En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; R.C.M. 1947, 11-3249(part).

7-3-4323. Conduct of commission business. (1) In municipalities having three commissioners, two commissioners shall constitute a quorum and the affirmative vote of two commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44. In municipalities having five commissioners, three commissioners shall constitute a quorum and the affirmative vote of three commissioners shall be necessary to adopt or reject any motion, resolution, or ordinance or pass any measure unless a greater number is provided for in this part or part 44.

(2) Upon every vote, the ayes and the nays shall be called and recorded, and every motion, resolution, or ordinance shall be reduced to writing and read before the vote is taken thereon.

(3) All meetings of the commission shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times. The

commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

(4) The commission shall choose a clerk and such other officers and employees of its own body as are necessary. The clerk shall be known as the clerk of the commission and shall keep records and perform such other duties as may be required by this part or part 44 or the commission.

History: (1), (2)En. Sec. 48, Ch. 152, L. 1917; re-en. Sec. 5446, R.C.M. 1921; re-en. Sec. 5446, R.C.M. 1935; Sec. 11-3247, R.C.M. 1947; (3)En. Sec. 50, Ch. 152, L. 1917; re-en. Sec. 5448, R.C.M. 1921; amd. Sec. 10, Ch. 31, L. 1923; re-en. Sec. 5448, R.C.M. 1935; Sec. 11-3249, R.C.M. 1947; (4)En. Sec. 53, Ch. 152, L. 1917; re-en. Sec. 5451, R.C.M. 1921; re-en. Sec. 5451, R.C.M. 1935; Sec. 11-3252, R.C.M. 1947; R.C.M. 1947, 11-3247, 11-3249(part), 11-3252.

7-3-4324. Procedure to enact ordinance or resolution. (1) Each proposed ordinance or resolution shall be introduced in written or printed form and shall not contain more than one subject, which shall be clearly stated in the title, but general appropriation ordinances may contain the various subjects and accounts for which money is to be appropriated. Every ordinance or resolution passed by the commission shall be signed by the mayor or two members and filed with the clerk within 2 days and by him recorded.

(2) The enacting clause of all ordinances passed by the commission shall be "Be it ordained by the commission of the (city or town) of (name of city or town)". The enacting clause of all ordinances submitted by the initiative shall be "Be it ordained by the people of the (city or town) of (name of city or town)".

(3) No ordinance, unless it be declared an emergency, shall be passed on the day on which it shall have been introduced unless so ordered by an affirmative vote of four-fifths of the members of the commission in cities with five commissioners and two-thirds of the members of the commission in all other cities and towns.

(4) No ordinance or resolution or section thereof shall be revised or amended unless the new ordinance or resolution contains the entire ordinance or resolution or section revised or amended.

(5) Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose and shall be authenticated by the signature of the presiding officer and the clerk of the commission. At least the number and title of every ordinance or resolution shall be published at least once within 10 days after its final passage in such manner as is provided in this part.

History: (1) thru (4)En. Sec. 51, Ch. 152, L. 1917; re-en. Sec. 5449, R.C.M. 1921; amd. Sec. 11, Ch. 31, L. 1923; re-en. Sec. 5449, R.C.M. 1935; Sec. 11-3250, R.C.M. 1947; (5)En. Sec. 55, Ch. 152, L. 1917; re-en. Sec. 5453, R.C.M. 1921; re-en. Sec. 5453, R.C.M. 1935; Sec. 11-3254, R.C.M. 1947; R.C.M. 1947, 11-3250, 11-3254.

7-3-4325. Effective date of ordinance or resolution. (1) All ordinances and resolutions shall be in effect from and after 30 days from the date of their passage by the commission except as otherwise provided in this part or part 44.

(2) The commission may, by an affirmative vote of all the members, pass emergency measures to take effect at the time indicated therein.

History: En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; R.C.M. 1947, 11-3251(part).

7-3-4326. Emergency measures. (1) An emergency measure is an ordinance or resolution for the immediate preservation of the public peace, property, health, or safety or providing for the usual daily operation of a municipal department, in which the emergency is set forth and defined in a preamble thereto. Ordinances or resolutions appropriating money or ordering any street improvement or sewer, unless it is endangering the health or safety of the inhabitants, or granting any franchise or extension of franchise or other special privilege or regulating the rate to be charged for its services by any public utility or right to occupy or use the streets, highways, bridges, or other public places shall never be passed as emergency measures.

(2) Ordinances passed as emergency measures shall be subject to a referendum in like manner as other ordinances, except that they shall go into effect at the time indicated in such ordinances. If, when submitted to a vote of the electors, an emergency measure is not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

History: (1)En. Sec. 52, Ch. 152, L. 1917; re-en. Sec. 5450, R.C.M. 1921; re-en. Sec. 5450, R.C.M. 1935; Sec. 11-3251, R.C.M. 1947; (2)En. Sec. 43, Ch. 152, L. 1917; re-en. Sec. 5441, R.C.M. 1921; re-en. Sec. 5441, R.C.M. 1935; Sec. 11-3242, R.C.M. 1947; R.C.M. 1947, 11-3242, 11-3251(part).

7-3-4327. Petition for initiative. (1) Any proposed ordinance may be submitted to the commission by petition signed by at least 10% of the total number of registered voters in the municipality. All petition papers circulated with respect to any proposed ordinance shall be uniform in character and shall contain the proposed ordinance in full and have printed or written thereon the names and addresses of at least five electors who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for the purposes hereinafter named.

(2) Each signer of a petition shall sign his name in ink or indelible pencil and shall place on the petition papers, after his name, his place of residence by street and number. The signatures of any such petition papers need not all be appended to one paper, but to each such paper there shall be attached an affidavit by the circulator thereof, stating the number of signers to such part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be and was made in the presence of the affiant.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided for initiating ordinances.

(4) Initiated ordinances adopted by the electors shall be published and may be amended or repealed by the commission as in the case of other ordinances.

History: (1)En. Sec. 31, Ch. 152, L. 1917; re-en. Sec. 5429, R.C.M. 1921; re-en. Sec. 5429, R.C.M. 1935; Sec. 11-3230, R.C.M. 1947; (2)En. Sec. 32, Ch. 152, L. 1917; re-en. Sec. 5430, R.C.M. 1921; re-en. Sec. 5430, R.C.M. 1935; Sec. 11-3231, R.C.M. 1947; (3), (4)En. Sec. 37, Ch. 152, L. 1917; re-en. Sec. 5435, R.C.M. 1921; re-en. Sec. 5435, R.C.M. 1935; Sec. 11-3236, R.C.M. 1947; R.C.M. 1947, 11-3230, 11-3231, 11-3236.

7-3-4328 through 7-3-4333. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4334. Procedure to abandon commission-manager form of government. (1) Any municipality which shall have operated for more than 2 years under the provisions of this part and part 44 may abandon its organization hereunder and accept the provisions of the general law of the state applicable to municipalities of its population.

(2) Upon the petition of the registered electors of such municipality equal to 25% of the number registered for the last preceding general election, a special election shall be called, at which the following proposition only shall be submitted:

"Shall the (city or town) of (name of city or town) abandon its organization under parts 43 and 44 of chapter 3 of Title 7, MCA, and become a (city or town) under the general law governing (cities or towns) of like population or, if formerly organized under special charter, resume said special charter?"

(3) If the majority of the votes cast at the special election are in favor of such proposition, the officers elected at the next succeeding biennial election shall be those then prescribed by the general laws of the state for municipalities of like population, and upon the qualification of the officers, the municipality shall become a municipality under the general law of the state, but the change shall not in any manner or degree affect the property, rights, or liabilities of any nature of the municipality but shall merely extend to each change in its form of government.

(4) The sufficiency of the petition shall be determined, the election ordered and conducted, and the results declared as provided for by the provisions of Title 13 insofar as the provisions thereof are applicable. Whenever the form of government of a municipality is determined by a vote of the people under the provisions of this section, the same question may not be submitted again for a period of 2 years and any ordinance adopted by the vote of the people shall not be repealed or the same question submitted for a period of 2 years.

History: En. Sec. 117, Ch. 152, L. 1917; re-en. Sec. 5514, R.C.M. 1921; re-en. Sec. 5514, R.C.M. 1935; R.C.M. 1947, 11-3330; amd. Sec. 301, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-3-4335 through 7-3-4340 reserved.

7-3-4341. General provisions relating to elections. (1) Except as otherwise provided in this part and part 44, all elections shall be conducted as provided in Title 13.

(2) Elected officials provided for in this part and part 44 shall be nominated and elected under the provisions of Title 13, chapter 14, part 1.

History: En. Sec. 17, Ch. 152, L. 1917; re-en. Sec. 5415, R.C.M. 1921; amd. Sec. 5, Ch. 31, L. 1923; re-en. Sec. 5415, R.C.M. 1935; R.C.M. 1947, 11-3216(5); amd. Sec. 302, Ch. 571, L. 1979.

7-3-4342 through 7-3-4352. Repealed. Sec. 407, Ch. 571, L. 1979.

7-3-4353 through 7-3-4360 reserved.

7-3-4361. Appointment of city manager. The commission shall appoint a city manager. He shall be appointed without regard to his political beliefs and may or may not be a resident of the municipality when appointed. He shall hold office at the will of the commission.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4362. Role of city manager. The city manager shall be the administrative head of the municipal government and shall be responsible for the efficient administration of all departments.

History: En. Sec. 57, Ch. 152, L. 1917; re-en. Sec. 5455, R.C.M. 1921; re-en. Sec. 5455, R.C.M. 1935; R.C.M. 1947, 11-3256(part).

7-3-4363. Powers and duties of city manager. The powers and duties of the city manager shall be:

(1) to see that the laws and ordinances are enforced;

(2) to appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in the departments in both the classified and unclassified service; all appointments to be upon merit and fitness alone and in the classified service all appointments to be subject to the civil service provisions of this part and part 44;

(3) to exercise control over all the departments and divisions created herein or that may hereafter be created by the commission;

(4) to attend all meetings of the commission, with the right to take part in the discussions but having no vote;

(5) to recommend to the commission for adoption such measures as he may deem necessary or expedient;

(6) to keep the commission fully advised as to the financial condition and needs of the city; and

(7) to perform such other duties as may be prescribed by this part or part 44 or be required of him by ordinance or resolution of the commission.

History: En. Sec. 58, Ch. 152, L. 1917; re-en. Sec. 5456, R.C.M. 1921; re-en. Sec. 5456, R.C.M. 1935; R.C.M. 1947, 11-3257.

7-3-4364. Compensation of city manager. The city manager shall receive such salary as may be fixed by ordinance of the commission, but such salary shall not be decreased during the term of office that the city manager is appointed for.

History: En. Sec. 59, Ch. 152, L. 1917; re-en. Sec. 5457, R.C.M. 1921; re-en. Sec. 5457, R.C.M. 1935; R.C.M. 1947, 11-3258.

7-3-4365. Investigations by commission. (1) The commission or any committee thereof duly authorized by the commission to do so may investigate the financial transactions of any office or department of the municipal government and the official acts of any municipal official and by similar investigations may secure information upon any matter.

(2) In conducting such investigations, the commission or any committee thereof may compel the attendance of witnesses and the production of books, papers, and other evidence and for that purpose may issue subpoenas or attachments, which shall be signed by the presiding officer of the commission or the chairman of such committee, as the case may be, and which may be

served and executed by any officer authorized by law to serve subpoenas or other process. No witness may be excused from testifying touching his knowledge of the matter under investigation in any such inquiry, but such testimony may not be used against him in any criminal prosecution except for perjury committed upon such inquiry.

History: **En. Sec. 56, Ch. 152, L. 1917; re-en. Sec 5454, R.C.M. 1921; re-en. Sec. 5454, R.C.M. 1935; R.C.M. 1947, 11-3255; amd. Sec. 24, Ch. 262, L. 1979.**

7-3-4366. Investigatory powers of city manager. The city manager may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined. Any person appointed by the city manager to examine the affairs of any department or the conduct of any officer or employee has the same power to compel the attendance of witnesses and the production of books and papers and other evidence as is conferred upon the commission by this part.

History: **En. Sec. 60, Ch. 152, L. 1917; re-en. Sec. 5458, R.C.M. 1921; re-en. Sec. 5458, R.C.M. 1935; R.C.M. 1947, 11-3259; amd. Sec. 25, Ch. 262, L. 1979.**

7-3-4367. Control of conflict of interest. (1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

History: **En. Sec. 15, Ch. 152, L. 1917; re-en. Sec. 5413, R.C.M. 1921; amd. Sec. 4, Ch. 31, L. 1923; re-en. Sec. 5413, R.C.M. 1935; amd. Sec. 1, Ch. 327, L. 1974; R.C.M. 1947, 11-3214(part).**

7-3-4368. Execution of conveyances of real property. In all cities operating under the commission-manager form in Montana, the mayor is hereby designated as the proper officer to execute conveyances of real property; however, a majority of the commission may designate the city manager to execute a conveyance. In either case, the authority to act shall be authorized by the passage of a resolution.

History: **En. Sec. 1, Ch. 54, L. 1955; R.C.M. 1947, 11-3286.**

7-3-4369. Appropriation of property for public or municipal purposes. Property within the corporate limits of the municipality may be appropriated for any public or municipal purpose, and to the full extent of the authority granted by the constitution of the state, such appropriation shall be made as herein provided. By such appropriation, the municipality may acquire a fee simple title or any less estate, easement, or use. Appropriations of property outside of the corporate limits of the municipality shall be made according to the requirements of and as provided by general law.

History: En. Sec. 97, Ch. 152, L. 1917; re-en. Sec. 5495, R.C.M. 1921; re-en. Sec. 5495, R.C.M. 1935; R.C.M. 1947, 11-3311.

7-3-4370. Use of county buildings. Whenever any city organized under this part and part 44 includes the county seat of the county in which it is situated, any unused space in the county buildings in such city may be rented to the city commissioners for municipal use by the board of county commissioners for such rent as shall represent an income of not more than 6% upon the investment in such buildings proportionate to the space rented. Such commissioners may also contract with the board of county commissioners for the performance by county officials or employees of any kind of municipal work which can be feasibly performed by them. The compensation for such work shall be based upon additional cost to the county of its performance, and such compensation shall be paid into the general fund of such county unless otherwise provided by law.

History: En. Sec. 124, Ch. 152, L. 1917 added by Sec. 6, Ch. 44, L. 1919; re-en. Sec. 5520, R.C.M. 1921; re-en. Sec. 5520, R.C.M. 1935; R.C.M. 1947, 11-3336.

7-3-4371. Estimate of expenditures and revenues. (1) The city manager shall submit to the commission an estimate of the expenditures and revenues of the municipal departments for the ensuing year. The estimate shall be compiled from detailed information obtained from the several departments on uniform blanks to be furnished by the city manager. The classification of the expenditures shall be as nearly uniform as possible for the main functional divisions of all departments and shall give in parallel columns the following information:

(a) a detailed estimate of the expenses of conducting each department as submitted by the department;

(b) expenditures for corresponding items for the last 2 fiscal years;

(c) expenditures for the corresponding items for the current fiscal year, including adjustments due to transfers between appropriations, plus an estimate of expenditure necessary to complete the current fiscal year;

(d) amount of supplies and materials on hand at the date of the preparation of the invoice;

(e) increase or decrease of requests compared with the corresponding appropriations for the current year;

(f) such other information as is required by the commission or that the city manager may deem advisable to submit;

(g) the recommendation of the city manager as to the amounts to be appropriated, with reasons therefor, in such detail as the commission may direct.

(2) A sufficient number of copies of such estimate shall be prepared and submitted that there may be copies on file in the office of the commission for inspection by the public.

History: En. Sec. 105, Ch. 152, L. 1917; re-en. Sec. 5502, R.C.M. 1921; amd. Sec. 17, Ch. 31, L. 1923; amd. Sec. 2, Ch. 173, L. 1925; re-en. Sec. 5502, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1941; R.C.M. 1947, 11-3318(part).

7-3-4372. Procedure to enact appropriation ordinance. (1) Upon receipt of such estimate, the commission shall prepare an appropriation ordinance in such form as may be prescribed by ordinance or resolution. Before finally acting upon such tentative appropriation, the commission shall fix a time and place for holding public hearing upon the tentative appropriation and shall give public notice of such hearing. Following the public hearings and before its final passage, the appropriation ordinance shall be published with a parallel comparison with the recommendation of the city manager. The commission shall not pass the appropriation ordinance until 10 days after its publication or before the second Monday in August.

(2) If, at the beginning of the term of office of the first commission elected under the provisions of this part and part 44, the appropriations for the expenditures of the municipal government for the current fiscal year have been made, said commission shall have the power by ordinance to revise, repeal, or change said appropriations and to make additional appropriations.

History: (1)En. Sec. 106, Ch. 152, L. 1917; re-en. Sec. 5503, R.C.M. 1921; amd. Sec. 3, Ch. 173, L. 1925; re-en. Sec. 5503, R.C.M. 1935; amd. Sec. 2, Ch. 99, L. 1941; Sec. 11-3319, R.C.M. 1947; (2)En. Sec. 107, Ch. 152, L. 1917; re-en. Sec. 5504, R.C.M. 1921; re-en. Sec. 5504, R.C.M. 1935; Sec. 11-3320, R.C.M. 1947; R.C.M. 1947, 11-3319, 11-3320.

7-3-4373. Financial administration. (1) Upon request of the city manager, the commission may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year has proved insufficient or may authorize a transfer to be made between items appropriated to the same office or department.

(2) At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the respective fund from which it was appropriated and shall be subject to future appropriations.

(3) Any accruing revenue of the municipality not appropriated as hereinbefore provided and any balance at any time remaining after the purpose of the appropriation shall have been satisfied or abandoned may from time to time be appropriated by the commission to such uses as will not conflict with any uses for which specifically such revenues accrued.

(4) No money shall be drawn from the treasury of the municipality, nor shall any obligation for the expenditure of money be incurred except pursuant to the appropriation made by the commission.

(5) All fees and money received or collected by officers and employees shall be paid into the city treasury.

History: (1)En. Sec. 108, Ch. 152, L. 1917; re-en. Sec. 5505, R.C.M.1921; re-en. Sec. 5505, R.C.M. 1935; Sec. 11-3321, R.C.M. 1947; (2) thru (4)En. Sec. 109, Ch. 152, L. 1917; re-en. Sec. 5506, R.C.M. 1921; re-en. Sec. 5506, R.C.M. 1935; Sec. 11-3322, R.C.M. 1947; (5)En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; Sec. 11-3323, R.C.M. 1947; R.C.M. 1947, 11-3321, 11-3322, 11-3323(part).

7-3-4374. Details of public advertising or publication. All public advertising or publication mentioned as being necessary under the provisions of this part or part 44 shall be in a daily newspaper of general circulation within the municipality if there be such; otherwise, in a weekly newspaper published therein, and shall be done by contract, or in a journal published by the municipality, as may be determined by ordinance. If such contract shall be with a newspaper, it shall be entered into only after opportunity has been given for competition under such rules as the commission may establish and for a term not longer than 1 year.

History: En. Sec. 70, Ch. 152, L. 1917; re-en. Sec. 5468, R.C.M. 1921; re-en. Sec. 5468, R.C.M. 1935; R.C.M. 1947, 11-3269.

Part 44

Municipal Commission-Manager Government Continued

7-3-4401. Administrative departments. (1) The following administrative departments are hereby established:

(a) department of law;
(b) department of public service;
(c) department of public welfare;
(d) department of public safety;
(e) department of finance.

(2) The commission may by ordinance discontinue any or several departments and determine, combine, and distribute the functions and duties of these departments and subdivisions thereof.

History: En. Sec. 61, Ch. 152, L. 1917; re-en. Sec. 5459, R.C.M. 1921; re-en. Sec. 5459, R.C.M. 1935; R.C.M. 1947, 11-3260.

7-3-4402. Appointment of department directors. The city manager shall appoint a director for each department, as specified herein or as specified by ordinance of the commission, who shall serve until removed by the city manager or until his successor is appointed and has qualified.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4403. Role of department director. Each director shall conduct the affairs of his department in accordance with the rules made by the city manager and shall be responsible for the conduct of the officers and employees of his department, for the performance of its business, and for the custody and preservation of the books, records, papers, and property under its control. Subject to the supervision and control of the city manager in all matters, the director of each department shall manage the department.

History: En. Sec. 62, Ch. 152, L. 1917; re-en. Sec. 5460, R.C.M. 1921; re-en. Sec. 5460, R.C.M. 1935; R.C.M. 1947, 11-3261(part).

7-3-4404. Appointment of boards. The commission may appoint a municipal plan board and, upon the request of the city manager, shall appoint advisory boards. The members of such boards shall serve without compensation, and their duty shall be to consult and advise with the various departments. The duties and powers thus created shall be prescribed by ordinance.

History: En. Sec. 63, Ch. 152, L. 1917; re-en. Sec. 5461, R.C.M. 1921; re-en. Sec. 5461, R.C.M. 1935; R.C.M. 1947, 11-3262.

7-3-4405. Establishment of civil service board. (1) The commission may appoint three electors of the municipality as a civil service board, with one to serve for 2 years, one for 4 years, and one for 6 years, and to take office on January 1 after the municipality comes under the provisions of this part and part 43 or as soon thereafter as appointed and qualified. Thereafter members of the civil service board shall be appointed to serve for 6 years and until their successors have been appointed and have qualified. The commission may remove any member of the board upon stating in writing the reasons for removal and allowing him an opportunity to be heard in his own defense. Any vacancy shall be filled by the commission for the unexpired term.

(2) Members of the board shall not hold any other public office.

(3) It is intended hereby that the establishment of a civil service board shall be permissive and not mandatory. If appointed the board may be abolished at any time upon resolution to that effect by the commission; and thereafter any civil service board appointed under the provisions of this part shall cease to exist, but so long as any such civil service board shall exist, its operations and proceedings shall be controlled as provided in this part.

(4) The salaries of the board and its employees shall be determined by the commission, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this part.

History: (1) thru (3)En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; Sec. 11-3272, R.C.M. 1947; (4)En. Sec. 86, Ch. 152, L. 1917; re-en. Sec. 5484, R.C.M. 1921; re-en. Sec. 5484, R.C.M. 1935; Sec. 11-3285, R.C.M. 1947; R.C.M. 1947, 11-3272(part), 11-3285.

7-3-4406. Organization of board. Immediately after appointment, the board shall organize by electing one of its members chairman. The board shall appoint a chief examiner, who shall also act as secretary. The board may appoint such other subordinates as may be provided for by appropriation.

History: En. Sec. 73, Ch. 152, L. 1917; re-en. Sec. 5471, R.C.M. 1921; amd. Sec. 15, Ch. 31, L. 1923; re-en. Sec. 5471, R.C.M. 1935; R.C.M. 1947, 11-3272(part).

7-3-4407. Classification of civil service. (1) The civil service of a municipality is hereby divided into the unclassified and the classified service.

(2) The unclassified service shall include:

(a) all officers elected by the people;

(b) the city manager;

(c) the heads of departments and heads of divisions of departments and members of appointive boards;

(d) the deputies and secretaries of the city manager and one assistant or deputy and one secretary for each department and the clerk of the commission.

(3) (a) The classified service shall comprise all positions not specifically included in this section in the unclassified service. There shall be in the classified service three classes, to be known as the competitive class, the noncompetitive class, and the labor class.

(b) The competitive class shall include all positions and employment for which it is practicable to determine the merit and fitness of applicants by competitive examination.

(c) The noncompetitive class shall consist of all positions and employment requiring peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. No competitive examinations will be given for these positions, but the past achievements of the applicant will be considered.

(d) The labor class shall include ordinary unskilled labor which is employed by the year.

History: En. Sec. 74, Ch. 152, L. 1917; re-en. Sec. 5472, R.C.M. 1921; re-en. Sec. 5472, R.C.M. 1935; R.C.M. 1947, 11-3273.

7-3-4408. Role of civil service board. (1) The board, subject to the approval of the commission, shall adopt, amend, and enforce a code of rules providing for appointment and employment in all positions in the classified service, based on merit, efficiency, character, and industry, which shall have the force and effect of law and shall make investigations concerning the enforcement and effect of this part and part 43 and of the rules adopted. It shall make an annual report to the commission.

(2) The board shall provide for promotion to all positions in the classified service based on records of merit, efficiency, character, conduct, and seniority.

History: (1)En. Sec. 75, Ch. 152, L. 1917; re-en. Sec. 5473, R.C.M. 1921; re-en. Sec. 5473, R.C.M. 1935; Sec. 11-3274, R.C.M. 1947; (2)En. Sec. 77, Ch. 152, L. 1917; re-en. Sec. 5475, R.C.M. 1921; re-en. Sec. 5475, R.C.M. 1935; Sec. 11-3276, R.C.M. 1947; R.C.M. 1947, 11-3274, 11-3276.

7-3-4409. Role of chief examiner. The chief examiner shall be the employment officer of all municipal employees coming under the classified service. He shall provide examinations in accordance with the regulations of the board and maintain lists of eligibles of each class of the service of those meeting the requirements of said regulations. Positions in the classified service shall be filled by him from such eligible lists upon requisition from and after consultation with the city manager. As positions are filled, the employment officer shall certify the fact, by proper and prescribed form, to the director of finance and the director of the department in which the vacancy exists.

History: En. Sec. 76, Ch. 152, L. 1917; re-en. Sec. 5474, R.C.M. 1921; re-en. Sec. 5474, R.C.M. 1935; R.C.M. 1947, 11-3275.

7-3-4410. Probationary period. An appointment or promotion shall not be deemed complete until a period of probation, not to exceed 6 months, has elapsed; and a probationer may be discharged or reduced at any time within the period of 6 months upon the recommendation of the head of the department in which said probationer is employed, with the approval of the majority of the board.

History: En. Sec. 78, Ch. 152, L. 1917; re-en. Sec. 5476, R.C.M. 1921; re-en. Sec. 5476, R.C.M. 1935; R.C.M. 1947, 11-3277.

7-3-4411. Procedure for discharge, demotion, or suspension of employee. (1) An employee shall not be discharged or reduced in rank or compensation until he has been presented with the reasons for such discharge or reduction, specifically stated in writing, and has been given an opportunity to be heard in his own defense. The reason for such discharge or reduction and any reply in writing thereto by such employee shall be filed with the board.

(2) Any employee of any department in the municipality in the classified service who is suspended, reduced in rank, or dismissed from a department

by the director of that department or the city manager may appeal from the decision of such officer to the civil service board, and such board shall define the manner, time, and place in which such appeal shall be heard. The judgment of such board shall be final.

History: (1)En. Sec. 79, Ch. 152, L. 1917; re-en. Sec. 5477, R.C.M. 1921; re-en. Sec. 5477, R.C.M. 1935; Sec. 11-3278, R.C.M. 1947; (2)En. Sec. 80, Ch. 152, L. 1917; re-en. Sec. 5478, R.C.M. 1921; re-en. Sec. 5478, R.C.M. 1935; Sec. 11-3279, R.C.M. 1947; R.C.M. 1947, 11-3278, 11-3279.

7-3-4412. Retention of existing positions. Any person in the employ of a municipality holding a position in the classified service at the time that the municipality comes under the provisions of this part and part 43 shall, unless his position be abolished, retain the same until discharged, reduced, promoted, or transferred in accordance herewith.

History: En. Sec. 81, Ch. 152, L. 1917; re-en. Sec. 5479, R.C.M. 1921; re-en. Sec. 5479, R.C.M. 1935; R.C.M. 1947, 11-3280.

7-3-4413. Certification required to receive salary. The director of finance or other public disbursing officer shall not pay any salary or compensation for services to any person holding a position in the classified service unless the payroll or account for such salary or compensation shall bear the certificate of the board, by its secretary, that the persons named therein have been appointed or employed and are performing service in accordance with the provisions of this part and part 43 or the rules established thereunder.

History: En. Sec. 82, Ch. 152, L. 1917; re-en. Sec. 5480, R.C.M. 1921; re-en. Sec. 5480, R.C.M. 1935; R.C.M. 1947, 11-3281.

7-3-4414. Investigatory powers of civil service board. In any investigation conducted by the board, it shall have the power to subpoena and require the attendance of witnesses and the production thereby of books and papers pertinent to the investigation and to administer oaths to such witnesses.

History: En. Sec. 83, Ch. 152, L. 1917; re-en. Sec. 5481, R.C.M. 1921; re-en. Sec. 5481, R.C.M. 1935; R.C.M. 1947, 11-3282.

7-3-4415. Prohibition on discrimination in employment. No person in the classified service or seeking admission thereto may be appointed, reduced, removed, or in any way favored or discriminated against because of political opinions or affiliations or because of race, color, creed, or religion.

History: En. Sec. 84, Ch. 152, L. 1917; re-en. Sec. 5482, R.C.M. 1921; re-en. Sec. 5482, R.C.M. 1935; amd. Sec. 1, Ch. 188, L. 1975; amd. Sec. 1, Ch. 38, L. 1977; R.C.M. 1947, 11-3283.

7-3-4416. Violation of civil service provisions. The board, subject to the approval of the commission, shall by ordinance determine the penalties for the violation of the civil service provisions of this part.

History: En. Sec. 85, Ch. 152, L. 1917; re-en. Sec. 5483, R.C.M. 1921; re-en. Sec. 5483, R.C.M. 1935; R.C.M. 1947, 11-3284.

7-3-4417. Fixing compensation. (1) The commission shall fix, by annual salary ordinance, the salary or compensation of the city manager, the heads of the departments, and its own employees.

(2) The city manager shall fix the number and salaries or compensation of all other officers and employees.

(3) In cities where there is a civil service board as provided for in this part, the salary or compensation so fixed shall be uniform for like service in each grade of the service as the same shall be graded or classified by the city manager in accordance with the rules adopted by the civil service board. All such salaries and rates of pay shall be reported to the secretary of the civil service board.

History: En. Sec. 110, Ch. 152, L. 1917; re-en. Sec. 5507, R.C.M. 1921; amd. Sec. 18, Ch. 31, L. 1923; amd. Sec. 4, Ch. 173, L. 1925; re-en. Sec. 5507, R.C.M. 1935; R.C.M. 1947, 11-3323(part).

7-3-4418. Power to establish eight-hour day. The commission shall have the power to provide by ordinance that on any public work carried on by the municipality, whether done by contract or otherwise, not to exceed 8 hours shall constitute a day's work.

History: En. Sec. 115, Ch. 152, L. 1917; re-en. Sec. 5512, R.C.M. 1921; re-en. Sec. 5512, R.C.M. 1935; R.C.M. 1947, 11-3328.

7-3-4419 through 7-3-4430 reserved.

7-3-4431. Department of finance. (1) The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality; the purchase, storage, and distribution of supplies needed by the various departments; the making and collection of special assessments; the issuance of licenses; the collection of license fees and taxes; and such other duties as the commission may by ordinance require.

(2) He shall install and have supervision over the accounts of all the departments and offices of the municipality. Whenever practicable the books of financial accounts shall be kept in the office of the department of finance. He shall require daily departmental reports of money receipts and the disposition thereof and shall require of each, in such form as may be prescribed, current financial and operating statements exhibiting each transaction and the cost thereof. Upon the death, resignation, removal or expiration of the term of any officer, he shall examine the accounts of such officer and report his findings to the city manager.

(3) He shall have charge of the preparation and certification of all special assessments for public improvements, the mailing of notices of such assessments to property owners and all other duties connected therewith, the collection of such assessments as are payable directly to the municipality, and the preparation and certification of all unpaid assessments to the county treasurer for collection. He shall issue all licenses and collect all fees therefor and shall pay the same into the treasury in the manner provided by ordinance.

(4) The director of finance shall be the custodian of all public money of the municipality and all other public money coming into his hands. He shall keep and preserve such money in the place or places determined by ordinance or by the provisions of any law applicable thereto. Except as otherwise provided in this part or part 43, he shall collect, receive, and disburse all public money of the municipality upon warrant and shall also receive and disburse all other public money coming into his hands in pursuance of such

regulations as may be prescribed by the authorities having lawful control over such funds.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(1) thru (3), (5), (7).

7-3-4432. Accounting procedures. Accounting procedure shall be devised and maintained for the municipality, adequate to record in detail all transactions affecting the acquisition, custodianship, and disposition of values, including cash receipts and disbursements. The recorded facts shall be presented periodically to officials and to the public in such summaries and analytical schedules in detailed support thereof as may be necessary to show the full effect of such transactions for each fiscal year upon the finances of the municipality and in relation to each department of the municipal government, including distinct summaries and schedules for each publicly owned and operated utility.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(4).

7-3-4433. Claims and issuance of warrants. No warrant for the payment of any claim shall be issued unless such claim shall be evidenced by a voucher approved by the head of the department for which the indebtedness was incurred and countersigned by the city manager. Before issuing such voucher, the supplies and materials delivered or work done shall be duly inspected and certified to by the head of the proper department or office or by a person designated by him. The head of each department or office shall require proper time reports from all services rendered, to be certified by those having cognizance thereof, to serve as a basis for the preparation of payroll vouchers. Each director of a department and his surety shall be liable to the municipality for all loss or damage sustained by the municipality, by reason of the negligent or corrupt approval of any claim against the municipality in his department. Prior to the drawing of a warrant for the payment of any voucher or claim, the director of finance may at his discretion cause an investigation or inspection to be made by a person designated by him and shall have power to summon persons and examine them under oath or affirmation, which oath or affirmation he may administer.

History: En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(6).

7-3-4434. Purchase and sale of supplies and property. (1) The director of finance or city manager shall, in manner provided by ordinance, purchase all supplies for the municipality and sell all real and personal property of the municipality not needed or unsuitable for public use or that may have been condemned as useless by the director of a department. He shall have charge of such storerooms and storehouses of the municipality as may be provided by ordinance, in which shall be stored all supplies and materials purchased by the municipality and not delivered to the various departments.

(2) He shall inspect all supplies delivered to determine quality and quantity and conformance with specifications, and no voucher shall be honored unless the accompanying invoice shall be endorsed as approved.

(3) He may require from the director of each department, at such times as contracts for supplies are to be let, a requisition for the quantity and kind of supplies to be paid for from the appropriations of the department.

(4) Upon certification that funds are available in the proper appropriations, such goods shall be purchased and shall be paid for from funds in the proper department for that purpose. However, this procedure shall not prejudice the director of finance or city manager from purchasing goods for cash to the credit of the stores account to be furnished the several departments on requisition; goods so furnished to be paid for by the department furnished therewith by warrant made payable to the stores account.

(5) He shall not furnish any supplies to or purchase any supplies for any department unless there be to the credit of such department an available appropriation balance in excess of all unpaid obligations sufficient to pay for such supplies.

(6) Before making any purchase or sale, the director of finance or city manager shall give opportunity for competition, all proposals to be upon precise specifications and under such rules as the commission shall establish. Each order of purchase or sale, to be approved and countersigned by the city manager or his deputy.

(7) In cases of emergency, purchases may be made without competition if a sufficient appropriation has theretofore been made against which purchases may lawfully be charged. In such cases, a copy of the order issued shall be filed with the director of finance, together with a certificate by the head of the department stating the facts of the emergency. A copy of this certificate shall be attached to and filed with the voucher covering payment for the supplies. The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this part and part 43. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer, and purchasing agent.

History: **En. Sec. 68, Ch. 152, L. 1917; re-en. Sec. 5466, R.C.M. 1921; amd. Sec. 13, Ch. 31, L. 1923; re-en. Sec. 5466, R.C.M. 1935; R.C.M. 1947, 11-3267(8) thru (13).**

7-3-4435. Approval required for certain contracts. No contract involving an expenditure of more than $250 for material or supplies shall be awarded except upon the approval of the city manager and the commission.

History: **En. Sec. 71, Ch. 152, L. 1917; re-en. Sec. 5469, R.C.M. 1921; re-en. Sec. 5469, R.C.M. 1935; R.C.M. 1947, 11-3270.**

7-3-4436. Sinking fund trustees. (1) The members of the commission, the city manager, and the director of finance shall constitute the sinking fund trustees. The mayor shall be the president and the director of finance shall be the secretary of the trustees of the sinking fund.

(2) The trustees of the sinking fund shall manage and control the sinking fund in the manner provided by laws of Montana or by ordinance.

History: **En. Sec. 69, Ch. 152, L. 1917; re-en. Sec. 5467, R.C.M. 1921; re-en. Sec. 5467, R.C.M. 1935; R.C.M. 1947, 11-3268.**

7-3-4437 through 7-3-4440 reserved.

7-3-4441. Department of public service. Subject to the control and supervision of the city manager in all matters, the director of public service shall manage and have charge of the construction, improvement, repair, and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts, and other public highways; of sewers, drains, ditches, culverts, canals, streams, and watercourses; of boulevards, squares, and other public places and grounds belonging to the municipality or dedicated to public use, except parks and playgrounds. He shall manage market houses, sewage disposal plants and farms, and all public utilities of the municipality. He shall have charge of the enforcement of all obligations of privately owned or operated public utilities enforceable by the municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings, and estimates for public work; the cleaning, sprinkling, and lighting of streets and public places; the collection and disposal of waste; and the preservation of contracts, papers, plans, tools, and appliances belonging to the municipality and pertaining to the department.

History: **En. Sec. 65, Ch. 152, L. 1917; re-en. Sec. 5463, R.C.M. 1921; re-en. Sec. 5463, R.C.M. 1935; R.C.M. 1947, 11-3264.**

7-3-4442. Local improvements. (1) The commission shall have the power by ordinance to provide for:

(a) the construction, reconstruction, repair, and maintenance, by contract or directly by the employment of labor, of all things in the nature of local improvements; and

(b) the payment of any part of the cost of any such improvement by levying and collecting special assessments upon abutting, adjacent, and contiguous or other specially benefited property, as provided by general law.

(2) Whenever the payments for such improvements are to extend over a period of years and are to be paid for in installments, the proceedings and all things done in connection with such improvements are to be done in strict conformity with the provisions of parts 41 and 42 of chapter 12.

History: **En. Sec. 87, Ch. 152, L. 1917; re-en. Sec. 5485, R.C.M. 1921; re-en. Sec. 5485, R.C.M. 1935; R.C.M. 1947, 11-3301.**

7-3-4443. Utility connections. (1) The director of public service shall have authority to compel the making of sewer, water, gas, and other connections whenever, in view of the contemplated street improvements or as a sanitary regulation, sewer, water, gas, or other connections should in his judgment be constructed.

(2) He shall cause written notice of his determination thereof to be given to the owner of each lot or parcel of land to which such connections are to be made. The notice shall state the number and character of connections required. Such notice shall be served by a person designated by the director of public service, in the manner provided for the service of summons in civil actions. Nonresidents of the municipality or persons who cannot be found may be served by one publication of such notice in a daily newspaper of general circulation in the municipality if such there be and, if not, by one publication in a weekly newspaper. The notice shall state the time within which such connections shall be constructed, and if they be not constructed within the time, the work may be done by the municipality and the cost thereof, together with a penalty of 5%, assessed against the lots and lands for which such connections are made; provided that the city commission may in its discretion order and direct that the cost of making any such connection by the municipality may be assessed without penalty and may be paid in annual installments over a period of not to exceed 8 years, together with interest

thereon not to exceed 6% per annum payable annually on the deferred payments. Said assessments shall be certified and collected as other assessments for street improvements. The actual work of making such connections shall be done under such regulations as are provided for by ordinance.

History: En. Sec. 88, Ch. 152, L. 1917; re-en. Sec. 5486, R.C.M. 1921; re-en. Sec. 5486, R.C.M. 1935; amd. Sec. 1, Ch. 45, L. 1939; R.C.M. 1947, 11-3302.

7-3-4444. Supervision of plats. (1) The director of public service shall be the supervisor of plats of the municipality. He shall see that the regulations governing the platting of all lands require all streets and alleys to be of proper width and to be coterminous with the adjoining streets and alleys and that all other regulations are conformed with. Whenever he shall deem it expedient to plat any portion of the territory within the corporate limits in which the necessary or convenient streets and alleys have not already been accepted by the municipality so as to become public streets or alleys or when any person plats any land within the corporate limits or within 3 miles thereof, the supervisor of plats shall, if such plats are in accordance with the regulations prescribed therefor, endorse his written approval thereon.

(2) No plat subdividing lands within the corporate limits or within 3 miles thereof shall be entitled to record in the recorder's office of the county without such written approval so endorsed thereon.

History: En. Sec. 91, Ch. 152, L. 1917; re-en. Sec. 5489, R.C.M. 1921; re-en. Sec. 5489, R.C.M. 1935; R.C.M. 1947, 11-3305.

7-3-4445. Subdivided lands. Subdivisions in the municipality must conform to the provisions of Title 76, chapter 3.

History: (1)En. Sec. 89, Ch. 152, L. 1917; re-en. Sec. 5487, R.C.M. 1921; amd. Sec. 16, Ch. 31, L. 1923; re-en. Sec. 5487, R.C.M. 1935; Sec. 11-3303, R.C.M. 1947; (2)En. Sec. 90, Ch. 152, L. 1917; re-en. Sec. 5488, R.C.M. 1921; re-en. Sec. 5488, R.C.M. 1935; Sec. 11-3304, R.C.M. 1947; R.C.M. 1947, 11-3303, 11-3304; amd. Sec. 26, Ch. 262, L. 1979.

7-3-4446. Acceptance of streets or alleys. (1) No streets or alleys except those laid down on such plat and bearing the approval of the supervisor of plats, as hereinbefore provided, shall subsequently in any way be accepted as public streets or alleys by the municipality or shall any public funds be expended in the repair or improvement of streets or alleys subsequently laid out and not on such plat. This restriction shall not apply to a street or alley laid out by the municipality or to streets, alleys, or public grounds laid out on a plat by or with the approval of the supervisor of plats.

(2) No street or alley hereafter dedicated to public use by the proprietor of ground in the municipality shall be deemed a public street or alley or under the care or control of the commission unless the dedication be accepted and confirmed by ordinance passed for such purpose or unless the provisions hereof relating to subdivisions shall have been complied with.

History: (1)En. Sec. 92, Ch. 152, L. 1917; re-en. Sec. 5490, R.C.M. 1921; re-en. Sec. 5490, R.C.M. 1935; Sec. 11-3306, R.C.M. 1947; (2)En. Sec. 95, Ch. 152, L. 1917; re-en. Sec. 5493, R.C.M. 1921; re-en. Sec. 5493, R.C.M. 1935; Sec. 11-3309, R.C.M. 1947; R.C.M. 1947, 11-3306, 11-3309.

7-3-4447. Supervision of public places. (1) The commission shall provide by ordinance for the care, supervision, control, and improvement of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipality and shall cause them to be kept open, in repair, and free from nuisance.

(2) When it deems it necessary, the commission may cause any street, alley, or public highway to be opened, straightened, altered, diverted, narrowed, widened, or vacated.

History: (1)En. Sec. 93, Ch. 152, L. 1917; re-en. Sec. 5491, R.C.M. 1921; re-en. Sec. 5491, R.C.M. 1935; Sec. 11-3307, R.C.M. 1947; (2)En. Sec. 94, Ch. 152, L. 1917; re-en. Sec. 5492, R.C.M. 1921; re-en. Sec. 5492, R.C.M. 1935; Sec. 11-3308, R.C.M. 1947; R.C.M. 1947, 11-3307, 11-3308.

7-3-4448. Vacating or changing name of street. (1) The commission, in vacating any street or part of a street or changing the name of any street, may include in one ordinance the change of name or the vacation or narrowing of more than one street, alley, or avenue. Before vacating any street or part thereof or narrowing any street, the commission shall first pass a resolution declaring its intention to do so.

(2) The city manager shall serve notice of the resolution, in the manner that service of summons is required to be made in civil actions, upon all persons whose property abuts upon the portion of the street affected by the proposed vacation or narrowing and shall publish notice once in one daily newspaper of general circulation in the municipality if there is one or if not, once in one weekly newspaper of like circulation. The notice shall state the time and place at which objections will be heard.

(3) Unless at least 51% of the affected property owners object to the proposed vacation or narrowing, the commission may by ordinance declare such vacation or narrowing. The order of the commission vacating or narrowing a street or alley which has been dedicated to public use by the proprietor, to the extent that it is vacated or narrowed, operates as a revocation of the acceptance thereof by the commission, but the right-of-way and easement therein of any lot owner is not impaired thereby.

History: En. Sec. 96, Ch. 152, L. 1917; re-en. Sec. 5494, R.C.M. 1921; re-en. Sec. 5494, R.C.M. 1935; R.C.M. 1947, 11-3310; amd. Sec. 27, Ch. 262, L. 1979.

7-3-4449. Grant of right to use or occupy public places. The commission shall have all powers to grant rights to occupy or use the streets, highways, bridges, or public places in the municipality that now are or hereafter may be granted to municipalities by the constitution or laws of Montana. Every ordinance or resolution passed by the commission granting the right to occupy or use streets, highways, or public places of municipalities shall be complete in the form in which it is finally passed and remain on file with the commission for inspection by the public for at least 1 week before the final adoption or passage thereof.

History: En. Sec. 98, Ch. 152, L. 1917; amd. Sec. 3, Ch. 44, L. 1919; re-en. Sec. 5496, R.C.M. 1921; re-en. Sec. 5496, R.C.M. 1935; R.C.M. 1947, 11-3312.

7-3-4450. Renewal of franchises. The commission may by ordinance renew any grant for the construction or operation of any utility, at its expiration, subject to petition and referendum as hereinbefore provided.

History: En. Sec. 99, Ch. 152, L. 1917; re-en. Sec. 5497, R.C.M. 1921; re-en. Sec. 5497, R.C.M. 1935; R.C.M. 1947, 11-3313.

7-3-4451. Prohibition on exclusive grant or franchise. No exclusive grant or renewal shall ever be granted, and no grant shall be renewed before 2 years prior to its expiration.

History: En. Sec. 100, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5498, R.C.M. 1921; re-en. Sec. 5498, R.C.M. 1935; R.C.M. 1947, 11-3314.

7-3-4452. Grant to operate public utility. (1) The commission shall, in any ordinance granting or renewing any grant to construct and operate a public utility, prescribe the manner in which the streets and public grounds shall be used and occupied.

(2) The commission may by ordinance grant to any individual, company, or corporation operating a public utility the right to extend the appliances and service of such utility outside of the territory as designated by the franchise, subject to petition and referendum as hereinbefore stated. All such extensions shall become part of the aggregate property of the utility and shall be subject to all the obligations and reserved rights in favor of the municipality applicable to the property of the utility by virtue of the ordinance providing for its construction and operation. The right to use and maintain any such extension shall expire with the original grant of the utility to which the extension was made or any renewal thereof.

(3) No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, and maintenance or operation of any public utility by original grant or renewal unless such public utility is of such character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

History: (1)En. Sec. 101, Ch. 152, L. 1917; amd. Sec. 5, Ch. 44, L. 1919; re-en. Sec. 5499, R.C.M. 1921; re-en. Sec. 5499, R.C.M. 1935; Sec. 11-3315, R.C.M. 1947; (2)En. Sec. 103, Ch. 152, L. 1917; re-en. Sec. 5500, R.C.M. 1921; re-en. Sec. 5500, R.C.M. 1935; Sec. 11-3316, R.C.M. 1947; (3)En. Sec. 104, Ch. 152, L. 1917; re-en. Sec. 5501, R.C.M. 1921; re-en. Sec. 5501, R.C.M. 1935; Sec. 11-3317, R.C.M. 1947; R.C.M. 1947, 11-3315, 11-3316, 11-3317.

7-3-4453. Assessments for snow, ice, weed, and rubbish removal. The commission shall have the power to provide by ordinance for assessing against the abutting property the cost of removing from the sidewalks all accumulation of snow and ice and for assessing against the property the cost of cutting and removing therefrom obnoxious weeds and rubbish.

History: En. Sec. 116, Ch. 152, L. 1917; re-en. Sec. 5513, R.C.M. 1921; re-en. Sec. 5513, R.C.M. 1935; R.C.M. 1947, 11-3329.

7-3-4454 through 7-3-4460 reserved.

7-3-4461. Department of law. (1) The head of the department of law shall be an attorney at law who has been admitted to practice in the state of Montana and shall be known as the city attorney.

(2) He shall be the legal adviser of and attorney and counsel for the municipality and for all the officers and departments thereof in matters relating to their official duties. He shall prosecute and defend all suits for and in behalf of the municipality and shall prepare all contracts, bonds, and other instruments in writing in which the municipality is concerned and shall endorse on each his approval of the form and correctness thereof. He shall

have such other duties and authority as are now conferred upon the city attorney by existing laws.

(3) He shall have such number of assistants as the commission by ordinance may authorize.

History: En. Sec. 64, Ch. 152, L. 1917; re-en. Sec. 5462, R.C.M. 1921; re-en. Sec. 5462, R.C.M. 1935; R.C.M. 1947, 11-3263.

7-3-4462. Office of city judge. (1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

History: (1)En. Sec. 72, Ch. 152, L. 1917; re-en. Sec. 5470, R.C.M. 1921; amd. Sec. 14, Ch. 31, L. 1923; re-en. Sec. 5470, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1977; Sec. 11-3271, R.C.M. 1947; (2)En. 11-3271.1 by Sec. 2, Ch. 219, L. 1977; Sec. 11-3271.1, R.C.M. 1947; (3)En. 11-3271.3 by Sec. 4, Ch. 219, L. 1977; Sec. 11-3271.3, R.C.M. 1947; R.C.M. 1947, 11-3271, 11-3271.1, 11-3271.3.

7-3-4463. Department of public welfare. (1) Subject to the supervision and control of the city manager in all matters, the director of public welfare shall manage all charitable, correctional, and reformatory institutions and agencies belonging to the municipality and the use of all recreational facilities of the municipality, including libraries, parks, and playgrounds. He shall have charge of the inspection and supervision of public amusements and entertainments. He shall enforce all laws, ordinances, and regulations relative to the preservation and promotion of the public health; the prevention and restriction of disease; the prevention, abatement, and suppression of nuisances; and the sanitary inspection and supervision of the production, transportation, storage, and sale of foodstuffs. He shall cause a complete and accurate system of vital statistics to be kept. In time of epidemic or threatened epidemic, he may enforce such quarantine regulations as are appropriate to the emergency. The director of public welfare shall provide for the study of and research into causes of poverty, delinquency, crime, disease, and other social problems in the community and shall, by means of lectures and exhibits, promote the education and understanding of the community in those matters which affect the public welfare.

(2) The health officer of the municipality shall be under the direction and control of the director of public welfare and shall enforce all ordinances and laws relating to health and shall perform all duties and have all powers provided by general law relative to the public health to be exercised in municipalities by health officers. Regulations affecting the public health additional to those established by general law and for the violation of which penalties are imposed shall be enacted by the commission and enforced as provided herein.

History: En. Sec. 66, Ch. 152, L. 1917; re-en. Sec. 5464, R.C.M. 1921; re-en. Sec. 5464, R.C.M. 1935; R.C.M. 1947, 11-3265.

7-3-4464. Department of public safety. (1) Subject to the supervision and control of the city manager in all matters, the director of public safety shall be the executive head of the division of police and fire. He shall also be the chief administrative authority in all matters affecting the inspection and regulation of the erection, maintenance, repair, and occupancy of buildings as may be ordained by the commission or established by the general law of Montana. He shall also be charged with the enforcement of all laws and ordinances relating to weights and measures.

(2) Nothing herein shall affect, impair, restrict, or repeal any provisions of general law authorizing the levying of taxes to provide for firefighters, police, and sanitary police pension funds and to create and perpetuate boards of trustees for the administration of such funds.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(1), (6).

7-3-4465. Police department. (1) The chief of police shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force, under such rules as the director of public safety may prescribe. The police force shall be composed of a chief of police and such officers, patrolmen, and other employees as the city manager may determine. In case of riot, in event of emergency, or at time of elections or similar occasions, the director of public safety may appoint additional patrolmen and officers for temporary service, who need not be in the classified service.

(2) No person shall act as special policeman, special detective, or other special police officer for any purpose whatsoever except upon the written authority of the director of public safety. Such authority shall be exercised only under the direction and control of the chief of police and for a specified time.

(3) Section 7-4-4202(1) and (4), parts 2 and 41 of chapter 32, and chapters 9 and 10 of Title 19 shall in all respects be applicable to and govern the police departments of all cities and towns under the commission-manager form of government provided for herein.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

7-3-4466. Fire department. (1) The fire chief shall have exclusive control of the stationing and transfer of all firefighters and other officers and employees constituting the fire force, under such rules as the director of public safety may prescribe. The fire force shall be composed of a chief and such other officers, firefighters, and employees as the city manager may from time to time determine. In case of riot, conflagration, or emergency, the director of public safety may appoint additional firefighters and other officers for temporary service, who need not be in the classified service.

(2) The provisions of part 41 of chapter 33 and chapter 11 of Title 19 shall in all respects be applicable to and govern fire departments of all cities and towns operating under the commission-manager plan of government.

History: En. Sec. 67, Ch. 152, L. 1917; re-en. Sec. 5465, R.C.M. 1921; amd. Sec. 12, Ch. 31, L. 1923; amd. Sec. 1, Ch. 173, L. 1925; re-en. Sec. 5465, R.C.M. 1935; amd. Sec. 1, Ch. 150, L. 1947; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 11-3266(part).

CHAPTER 4

OFFICERS

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Part 1

General Provisions

7-4-101. Filing of oath of office. Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

History: En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

7-4-102. Office hours. Unless otherwise provided by law, every officer must keep his office open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except Saturdays and legal holidays. Every officer shall keep his office open at such other times as the accommodation of the public or the proper transaction of business requires, except county and city treasurers, who in their discretion may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

Parts 2 through 20 reserved

Part 21

County Commissioners

7-4-2101. Composition of board of county commissioners. Each county may have a board of county commissioners consisting of three members.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part).

7-4-2102. Division of county into commissioner districts. (1) In every county of the state, following each federal decennial census, the board of county commissioners shall divide their respective counties into three commissioner districts, as compact and equal in population and area as possible. Such apportionment may take place at any time for the purpose of equalizing in population and area such commissioner districts. However, no commissioner district shall at any time be changed to affect the term of office of any county commissioner who has been elected. No change in the boundaries of any commissioner district shall be made within 6 months next preceding a general election.

(2) The district judge or judges of the county shall review the action of the commissioners to determine whether or not such action meets the requirements of this section.

(3) Sections 7-4-2102 through 7-4-2104 shall not apply to counties adopting an optional or alternative form of government authorized by law.

History: (1), (2)En. 16-902.1 by Sec. 1, Ch. 298, L. 1974; Sec. 16-902.1, R.C.M. 1947; (3)En. 16-902.5 by Sec. 5, Ch. 298, L. 1974; Sec. 16-902.5, R.C.M. 1947; R.C.M. 1947, 16-902.1, 16-902.5.

7-4-2103. Filing of certificate designating districts. When such division of commissioner districts has been made, there shall be filed in the office of the county clerk and recorder of such county a certificate designating the metes and bounds of the boundary lines and limits of each commissioner district. The certificate shall be dated and signed by the district court judge or judges of the county.

History: En. 16-902.2 by Sec. 2, Ch. 298, L. 1974; R.C.M. 1947, 16-902.2.

7-4-2104. Commissioners to be elected by district. (1) At each general election, the member or members of the board of county commissioners to be elected shall be selected from the residents and electors of the district or districts in which the vacancy occurs, but the election of such member or members of the board shall be submitted to the entire electorate of the county.

(2) No one shall be elected as a member of said board who has not resided in said district for at least 2 years next preceding the time when he shall become a candidate for said office.

History: En. 16-902.3 by Sec. 3, Ch. 298, L. 1974; R.C.M. 1947, 16-902.3.

7-4-2105. Term of office. The term of office of county commissioners is 6 years.

History: En. Sec. 4210, Pol. C. 1895; re-en. Sec. 2881, Rev. C. 1907; re-en. Sec. 4452, R.C.M. 1921; Cal. Pol. C. Sec. 4022; amd. Sec. 1, Ch. 118, L. 1933; re-en. Sec. 4452, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1973; R.C.M. 1947, 16-901(part).

7-4-2106. Vacancy on board of county commissioners. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Whenever a vacancy occurs in the board of county commissioners from a failure to elect or otherwise, the district judge or judges in whose district the vacancy occurs must fill the vacancy, and such appointee shall hold office until the next general election unless otherwise provided in subsection (3) or (4).

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second or fourth year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second or fourth year of the term, the same procedure shall be utilized as is used to elect county commissioners to full 6-year terms.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the fourth year of the term, the person appointed by the district judge under 7-4-2106(2) shall serve until the end of the term.

History: En. Sec. 4212, Pol. C. 1895; re-en. Sec. 2883, Rev. C. 1907; amd. Sec. 1, Ch. 5, L. 1913; amd. Sec. 1, Ch. 28, L. 1921; re-en. Sec. 4454, R.C.M. 1921; Cal. Pol. C. Sec. 4026; re-en. Sec. 4454, R.C.M. 1935; R.C.M. 1947, 16-903; amd. Sec. 2, Ch. 526, L. 1979.

7-4-2107. Compensation of county commissioners. (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary to be established by resolution of the board in an amount not to exceed the annual salary established in the schedule in 7-4-2503 for the clerk and recorder.

(2) Each member of the board in all other counties is entitled to a salary to be established by the board by resolution in an amount not to exceed $40 per day for each day's attendance on the sessions of the board.

(3) This section does not apply to counties that have adopted charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part).

7-4-2108. Mileage allowance for county commissioners — expenses. (1) In addition to the salary provided by 7-4-2107(1), each member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence, each day that such trip is actually made and while engaged in the performance of his official duties.

(2) Each member of the board in all other counties is entitled to a mileage allowance as provided in 2-18-503 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made to perform official duties. Any county commissioner whose place of residence is 50 miles or more from the county seat, as measured by the usual route of travel, and who elects to remain more than one day in the county seat to attend sessions of the board or perform his official duties is entitled to receive, in addition to mileage for one round trip between his place of residence and the county seat, $18 per day as expenses for each day's attendance on sessions of the board while engaged in the performance of his official duties.

(3) All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(4) When other than commercial, nonreceiptable lodging facilities are utilized by a county commissioner, the amount of $7 will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in this section. However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.

(5) This section does not apply to counties that have adopted charter form of government.

History: En. Sec. 347, 5th Div. Rev. Stat. 1879; amd. Sec. 755, 5th Div. Comp. Stat. 1887; amd. Sec. 4222, Pol. C. 1895; re-en. Sec. 2893, Rev. C. 1907; re-en. Sec. 4464, R.C.M. 1921; re-en. Sec. 4464, R.C.M. 1935; amd. Sec. 1, Ch. 176, L. 1939; amd. Sec. 1, Ch. 4, L. 1949; amd. Sec. 1, Ch. 100, L. 1951; amd. Sec. 1, Ch. 82, L. 1955; amd. Sec. 1, Ch. 238, L. 1957; amd. Sec. 1, Ch. 113, L. 1963; amd. Sec. 1, Ch. 260, L. 1965; amd. Sec. 1, Ch. 56, L. 1967; amd. Sec. 1, Ch. 223, L. 1967; amd. Sec. 1, Ch. 177, L. 1969; amd. Sec. 1, Ch. 415, L. 1973; amd. Sec. 6, Ch. 439, L. 1975; amd. Sec. 3, Ch. 493, L. 1977; R.C.M. 1947, 16-912(part); amd. Sec. 1, Ch. 370, L. 1979.

7-4-2109. Chairman of board. The board of county commissioners must elect one of its members chairman. The chairman must preside at all meetings of the board and in case of his absence or inability to act, the members present must by an order select one of their number to act temporarily as chairman.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

7-4-2110. Supervision of county and other officers. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to:

(1) supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues;

(2) see that they faithfully perform their duties;

(3) direct prosecutions for delinquencies; and

(4) when necessary, require them to renew their official bonds, make reports, and present their books and accounts for inspection.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

7-4-2111. Indemnity insurance for county officers. The board of county commissioners may in its discretion pay a proper charge to any insurance company authorized to do business in this state for effecting insurance providing indemnity for or protection to any county officer against his liability for the loss, without fault, connivance, or neglect on his part, of money, securities, or other property for which he is accountable to the county.

History: Secs. 4465-4465.29, R.C.M. 1935, en. as Sec. 4230, Pol. C. 1895; re-en. Sec. 2894, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1919; Subd. 5 amd. Sec. 1, Ch. 84, L. 1919; amd. Sec. 1, Ch. 94, L. 1919; re-en. Sec. 4465, R.C.M. 1921; Cal. Pol. C. Sec. 4046; amd. Sec. 1, Ch. 95, L. 1923; amd. Sec. 1, Ch. 54, L. 1927; amd. Sec. 1, Ch. 38, L. 1929; Subd. 28 amd. Sec. 1, Ch. 142, L. 1929; amd. Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465, R.C.M. 1935; amd. Sec. 1, Ch. 16, L. 1965; R.C.M. 1947, 16-1001(part).

7-4-2112. County seal. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to adopt a seal for the board. A description and impression thereof must be filed by the clerk in the offices of the county clerk and the secretary of state.

History: En. Subd. 24, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.23, R.C.M. 1935; R.C.M. 1947, 16-1026.

7-4-2113. Liability on official bond of commissioner. In addition to any other penalty provided in this code, any county commissioner who neglects or refuses to perform any duty imposed on him without just cause therefor, who willfully violates any law provided for his government as such officer, who fraudulently or corruptly performs any duty imposed on him, or who willfully, fraudulently, or corruptly attempts to perform an act unauthorized by law as commissioner forfeits to the county $500 for every such act, to be recovered on his official bond, and is further liable on his official bond to any person injured thereby for all damages sustained.

History: En. Sec. 4295, Pol. C. 1895; re-en. Sec. 2954, Rev. C. 1907; re-en. Sec. 4520, R.C.M. 1921; Cal. Pol. C. Sec. 4086; re-en. Sec. 4520, R.C.M. 1935; R.C.M. 1947, 16-1161.

Part 22

County Officers in General

7-4-2201. General qualifications for county office. No person is eligible to a county office who at the time of his election is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the county in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4310, Pol. C. 1895; re-en. Sec. 2955, Rev. C. 1907; re-en. Sec. 4723, R.C.M. 1921; Cal. Pol. C. Sec. 4101; re-en. Sec. 4723, R.C.M. 1935; amd. Sec. 1, Ch. 423, L. 1971; R.C.M. 1947, 16-2401.

7-4-2202. General qualifications for district or township offices. No person is eligible to a district or township office who is not:

(1) of the age of voting as required by the Montana constitution;

(2) a citizen of the state; and

(3) an elector of the district or township in which the duties of the office are to be exercised or for which he is elected.

History: En. Sec. 4311, Pol. C. 1895; re-en. Sec. 2956, Rev. C. 1907; re-en. Sec. 4724, R.C.M. 1921; Cal. Pol. C. Sec. 4102; re-en. Sec. 4724, R.C.M. 1935; amd. Sec. 2, Ch. 423, L. 1971; R.C.M. 1947, 16-2402.

7-4-2203. County officers. (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and such other qualifications as may be prescribed by law:

(a) one county attorney;
(b) one clerk of the district court;
(c) one county clerk;
(d) one sheriff;
(e) one treasurer;
(f) one auditor if authorized by 7-6-2401;
(g) one county superintendent of schools;
(h) one county surveyor;
(i) one assessor;
(j) one coroner;
(k) one public administrator; and

(1) at least one justice of the peace.

(2) The commissioners may appoint at their discretion constables. Not more than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 1, Ch. 443, L. 1979.

7-4-2204. Township officers. The officers of townships are as provided elsewhere in this code or by the board of county commissioners.

History: En. Sec. 4313, Pol. C. 1895; re-en. Sec. 2958, Rev. C. 1907; re-en. Sec. 4726, R.C.M. 1921; Cal. Pol. C. Sec. 4104; re-en. Sec. 4726, R.C.M. 1935; amd. Sec. 10, Ch. 491, L. 1973; amd. Sec. 2, Ch. 253, L. 1975; R.C.M. 1947, 16-2404.

7-4-2205. Term of office. (1) Persons elected to the different offices named in 7-4-2203 shall hold their respective offices for the term of 4 years and until their successors are elected and qualified.

(2) Persons appointed to the different offices serve at the pleasure of the commissioners.

(3) The officers mentioned in this part must take office on the first Monday of January succeeding their election, except the county treasurer, whose term begins on the first Monday of March next succeeding his election.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part).

7-4-2206. Vacancies. (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

(2) Vacancies in all county offices, except that of county commissioner, shall be filled by appointment by the board of county commissioners. Except for the justice of the peace, the appointee shall hold his office, if elective, until the next general election unless otherwise provided in subsections (3) or (4), and if not elective, the appointee serves at the pleasure of the commissioners.

(3) Whenever a vacancy occurs 50 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 50 days or more before the primary election during the second year of the term, the same procedure shall be utilized as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs after the 50th day preceding the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the clerk and recorder of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate shall be filed with the clerk and recorder on or before the 40th day prior to the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after the 50th day preceding the general election held during the second year of the term, the person appointed by the commissioners under 7-4-2206(2) shall serve until the end of the term.

(5) Vacancies occurring in the office of justice of the peace shall be filled as provided in Title 3, chapter 10, part 2.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 3, Ch. 526, L. 1979.

7-4-2207. Duty of officers to complete official business. It is the duty of all officers to complete the business of their respective offices to the time of the expiration of their respective terms. In case any officer, at the close of his term, leaves to his successor official labor to be performed for which he has received compensation or which it was his duty to perform, he is liable to pay to his successor the full value of such services, which may be recovered in any court of competent jurisdiction upon action brought against him on his official bond.

History: En. Sec. 4623, Pol. C. 1895; re-en. Sec. 3156, Rev. C. 1907; re-en. Sec. 4905, R.C.M. 1921; re-en. Sec. 4905, R.C.M. 1935; R.C.M. 1947, 25-221.

7-4-2208. Absence of county officers from state. (1) Except as provided in subsection (2), a county officer must in no case absent himself from the state for a period of more than 60 days and for no period longer than 5 days without the consent of the board of county commissioners, and if he does so absent himself, he forfeits his office.

(2) The sheriff, undersheriff, or deputy sheriffs of any county may absent themselves from the state, with the permission of the board, for a period of more than 60 days for the sole purpose of attending a recognized and accredited law enforcement training school without effecting forfeiture of their offices.

History: En. Sec. 4326, Pol. C. 1895; re-en. Sec. 2971, Rev. C. 1907; re-en. Sec. 4739, R.C.M. 1921; Cal. Pol. C. Sec. 4120; re-en. Sec. 4739, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1947; R.C.M. 1947, 16-2417.

7-4-2209. Authority to administer oaths. Every officer mentioned in 7-4-2203(1) may administer and certify oaths.

History: En. Sec. 4325, Pol. C. 1895; re-en. Sec. 2970, Rev. C. 1907; re-en. Sec. 4738, R.C.M. 1921; Cal. Pol. C. Sec. 4118; re-en. Sec. 4738, R.C.M. 1935; R.C.M. 1947, 16-2416; amd. Sec. 2, Ch. 443, L. 1979.

7-4-2210. Restriction on practice of law by certain officers. (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as such.

(2) No county clerk, clerk of any court, or sheriff shall act as agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or

general government or courts of the United States during his continuance in office.

History: (1)En. Sec. 4327, Pol. C. 1895; re-en. Sec. 2972, Rev. C. 1907; re-en. Sec. 4740, R.C.M. 1921; Cal. Pol. C. Sec. 4121; re-en. Sec. 4740, R.C.M. 1935; Sec. 16-2418, R.C.M. 1947; (2)En. Secs. 454, 455, p. 134, Bannack Stat.; re-en. Secs. 611, 612, p. 159, Cod. Stat. 1871; re-en. Secs. 531, 532, p. 179, L. 1877; re-en. Secs. 531, 532, 1st Div. Rev. Stat. 1879; re-en. Secs. 548, 549, 1st Div. Comp. Stat. 1887; re-en. Sec. 181, C. Civ. Proc. 1895; re-en. Sec. 6316, Rev. C. 1907; re-en. Sec. 8869, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8869, R.C.M. 1935; amd. Sec. 1, Ch. 23, L. 1963; Sec. 93-902, R.C.M. 1947; R.C.M. 1947, 16-2418, 93-902(part).

7-4-2211. County offices. (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties where such officer is maintained, and the county assessor must keep their offices open for the transaction of business from 8 a.m. until 5 p.m. continuously every day in the year except holidays and Saturdays; provided, however, that the offices enumerated herein shall be kept open on Saturdays and on holidays and at other times when the business of said offices requires them to be kept open.

(b) This subsection shall not apply to counties operating under the county manager plan.

History: (1)En. Sec. 4322, Pol. C. 1895; re-en. Sec. 2967, Rev. C. 1907; re-en. Sec. 4735, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4735, R.C.M 1935; amd. Sec. 2, Ch. 276, L. 1974; Sec. 16-2413, R.C.M. 1947; (2)En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; Sec. 16-2414, R.C.M. 1947; R.C.M. 1947, 16-2413, 16-2414(part).

7-4-2212. Official bonds of county officers. (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

History: (1)New section recommended by code commissioner, 1921; re-en. Sec. 4743, R.C.M. 1935; Sec. 16-2421, R.C.M. 1947; (2)En. Sec. 4324, Pol. C. 1895; re-en. Sec. 2969, Rev. C. 1907; re-en. Sec. 4737, R.C.M. 1921; Cal. Pol. C. Sec. 4117; re-en. Sec. 4737, R.C.M. 1935; Sec. 16-2415, R.C.M. 1947; R.C.M. 1947, 16-2415, 16-2421.

7-4-2213. Inspection of official bonds. (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties thereon and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members thereof that any surety upon any such bond has, since the approval and acceptance of such bond, died or withdrawn therefrom; left the state; disposed of all of his property in this state; or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of his liability thereon, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection therewith and the reasons thereof.

(3) The judge shall take cognizance thereof and investigate such matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make such bond good and sufficient according to the requirements of law and ample security for the amount thereof.

History: En. Sec. 1, p. 92, L. 1901; re-en. Sec. 2978, Rev. C. 1907; re-en. Sec. 4744, R.C.M. 1921; re-en. Sec. 4744, R.C.M. 1935; R.C.M. 1947, 16-2422; amd. Sec. 3, Ch. 443, L. 1979.

7-4-2214 through 7-4-2220 reserved.

7-4-2221. Manner of keeping records and storing documents. (1) Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by the national bureau of standards.

(2) Nothing in 7-4-2613 shall be construed as preventing the recording or photographing or copying of such instruments separately upon a single or loose page or pages of a book if such page or pages shall immediately become a part of such book or volume which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.

History: (1)En. Sec. 1, Ch. 117, L. 1959; Sec. 16-2428, R.C.M. 1947; (2)En. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; R.C.M. 1947, 16-2428, 16-2902(part).

7-4-2222. Substitution of reproduction for original document. (1) Any such document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221(1), the original of which is not less than 10 years old, can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted therefor as public records.

(2) The photostatic, microphotographic, or microfilmed copy of any such record destroyed or disposed of as herein authorized or a certified copy thereof shall be admissible as evidence in any court or proceeding and shall have the same force and effect as though the original record had been produced and proved.

(3) It shall be the duty of the custodian of such records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

History: (1)En. Sec. 2, Ch. 117, L. 1959; Sec. 16-2429, R.C.M. 1947; (2), (3)En. Sec. 3, Ch. 117, L. 1959; Sec. 16-2430, R.C.M. 1947; R.C.M. 1947, 16-2429, 16-2430.

7-4-2223. Duplicate records — safe storage of one copy. (1) Whenever any record or document is copied or reproduced by microphotographic, microfilm, or other mechanical process as provided in 7-4-2221, it shall be made in duplicate.

(2) The custodian thereof shall place one copy, the contents thereof being first duly identified and indexed, in a fireproof vault or fireproof storage

place. He shall retain the other copy in his office with suitable equipment for displaying such record by projection to not less than its original size or for preparing copies of the record for persons entitled thereto.

History: En. Sec. 4, Ch. 117, L. 1959; R.C.M. 1947, 16-2431.

Part 23

Consolidation of County Offices

7-4-2301. Authorization to consolidate county offices. (1) Except as provided in subsection (2), the board of county commissioners of any county may in its discretion consolidate any two or more of the offices named in 7-4-2203 and combine the powers and the duties of the consolidated offices.

(2) The office of the justice of the peace may not be combined or consolidated with any other office other than another justice of the peace office.

History: En. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; R.C.M. 1947, 16-2406(part); amd. Sec. 4, Ch. 443, L. 1979.

7-4-2302. Petition for consolidation of county offices. (1) At any time not later than 7 months before the date of any general election at which any county officers are to be elected, a petition in writing may be filed with the board of county commissioners of a county asking for the consolidation of any two or more of said offices by the board of such county.

(2) The petition shall be signed by not less than 15% of the qualified electors of such county whose names appear on the registration records thereof.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2303. Petition for intercounty consolidation of offices. (1) A written petition may also be filed with the boards of county commissioners of counties asking for consolidation of any two or more offices among several counties.

(2) In the case of consolidation of offices among several counties, the petition shall be signed by not less than 15% of the qualified electors in each of the counties affected.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2304. Petition details. (1) Said petition shall be addressed to the board or boards of county commissioners of the counties affected and shall set forth and state the reasons why such consolidation is believed by the petitioners to be necessary or desirable or for the best interests of the county taxpayers.

(2) Each person signing such petition shall place his post-office address and voting precinct after his name.

History: En. Sec. 1, Ch. 125, L. 1935; re-en. Sec. 4749.1, R.C.M. 1935; amd. Sec. 7, Ch. 100, L. 1973; amd. Sec. 1, Ch. 458, L. 1973; R.C.M. 1947, 16-2501(part).

7-4-2305. Initiation of consolidation by county commissioners. (1) The board or boards of county commissioners may initiate the consolidation of county offices under the procedure set forth in this part. Any board or boards desiring to consolidate any two or more offices or any two or more offices among several counties under the provisions of this part shall first pass a resolution stating the intent of the board or boards to consider consolidation.

(2) Nothing contained herein shall be deemed as limiting in any manner the discretion of the county commissioners to consolidate the several offices without the filing of the petition provided for in this part.

History: (1)En. 16-2501.1 by Sec. 2, Ch. 458, L. 1973; Sec. 16-2501.1, R.C.M. 1947; (2)En. Sec. 4, Ch. 125, L. 1935; re-en. Sec. 4749.4, R.C.M. 1935; amd. Sec. 8, Ch. 100, L. 1973; Sec. 16-2504, R.C.M. 1947; R.C.M. 1947, 16-2501.1, 16-2504.

7-4-2306. Processing of petition — resolution of intent and hearing. (1) Upon the filing of a petition for consolidation, the board or boards of county commissioners shall cause the county clerk or clerks to examine the petition and the registration records of the county or counties.

(2) If after such examination the county clerk or clerks report to the board or boards of county commissioners that the petition has been signed by not less than 15% of the qualified electors of the county whose names appear on the registration records, the board or boards shall set a date for a hearing and pass a resolution of intent to consider the consolidation. Upon passage of the resolution of intent by the board or boards, proper notice shall be given for the hearing. The date for the hearing may not be more than 20 days after the filing of the petition or the passage of the resolution of intent.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part); amd. Sec. 5, Ch. 443, L. 1979.

7-4-2307. Notice of hearing. (1) The county clerk or clerks shall cause notice of the hearing required by 7-4-2306 to be published one time in the official newspaper of the county, which publication must be at least 10 days before the date set for said hearing. If there is no newspaper of general circulation printed and published in said county, then such notice must be posted by the county clerk or clerks, at least 10 days before the date set for such hearing, in three public places in the county or counties.

(2) Said notice shall either contain a copy of said petition, with the signatures omitted, or a copy of the resolution of intent passed by the board or boards of county commissioners and shall state the time and place fixed for hearing the same and that on such hearing, any taxpayer of the county may appear and be heard in support of or in opposition to said petition.

History: En. Sec. 2, Ch. 125, L. 1935; re-en. Sec. 4749.2, R.C.M. 1935; amd. Sec. 3, Ch. 458, L. 1973; R.C.M. 1947, 16-2502(part).

7-4-2308. Joint hearings. Nothing herein shall prevent the boards of county commissioners in counties affected by intercounty consolidation from holding joint hearings, provided the proper notice is given in each of the counties affected as set forth in 7-4-2306 and 7-4-2307.

History: En. 16-2502.1 by Sec. 4, Ch. 458, L. 1973; R.C.M. 1947, 16-2502.1.

7-4-2309. Conduct of hearing — decision. (1) At the time designated in said notice, the county commissioners shall proceed to hear said petition and the evidence for or against the same. Any qualified elector of the county affected shall have the right to appear and be heard upon said petition, subject, however, to the right of the county commissioners to limit cumulative testimony and to prevent the undue prolonging of said hearing.

(2) Within 5 days after the date set for said hearing, the board or boards of county commissioners shall make such order in relation to the consolidation of said offices as they shall deem proper.

History: En. Sec. 3, Ch. 125, L. 1935; re-en. Sec. 4749.3, R.C.M. 1935; amd. Sec. 5, Ch. 458, L. 1973; R.C.M. 1947, 16-2503.

7-4-2310. Order for consolidation of offices. (1) In consolidating county offices, the board of county commissioners shall, 6 months prior to the general election held for the purpose of filling the offices to be consolidated or 6 months prior to the appointment to the offices to be consolidated, make and enter an order combining any two or more of the within-named offices.

(2) Whenever an order consolidating two or more offices is made, the order shall be entered in full on the board's minutes of proceedings.

(3) The order shall be published in a newspaper of general circulation, printed and published in the county or counties affected, for a period of 2 successive weeks following the date of the making and entering of the order.

History: Ap. p. Sec. 4315, Pol. C. 1895; re-en. Sec. 2960, Rev. C. 1907; re-en. Sec. 4728, R.C.M. 1921; Cal. Pol. C. Sec. 4109; re-en. Sec. 4728, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1939; amd. Sec. 16, Ch. 123, L. 1973; amd. Sec. 1, Ch. 129, L. 1973; amd. Sec. 12, Ch. 491, L. 1973; amd. Sec. 3, Ch. 253, L. 1975; Sec. 16-2406, R.C.M. 1947; Ap. p. Sec. 5, Ch. 125, L. 1935; re-en. Sec. 4749.5, R.C.M. 1935; amd. Sec. 9, Ch. 100, L. 1973; amd. Sec. 6, Ch. 458, L. 1973; Sec. 16-2505, R.C.M. 1947; R.C.M. 1947, 16-2406(part), 16-2505; amd. Sec. 6, Ch. 443, L. 1979.

7-4-2311. Implementation of consolidation order. (1) Whenever any such order is made consolidating two or more of such offices, it shall be the duty of the officers holding and occupying such offices, at the end of their terms of office, to deliver and transfer to their successor or successors all of the books, files, papers, documents, maps, plats, and records of such offices.

(2) The officer or officers receiving the same shall make and deliver proper receipts therefor and shall thereafter:

(a) be the custodian or custodians of such books, files, papers, documents, maps, plats, and records;

(b) perform all of the duties and acts imposed on such consolidated offices as required of them by law; and

(c) make and execute, with full legal force and effect, all certificates, official statements, official reports, affidavits, and other instruments required to be made by the laws of this state by either or any of the officers whose offices have been so consolidated.

(3) If the laws of this state or the rules, regulations, orders, or directions of any officer or department of the state shall require each of two offices which are consolidated to keep duplicate or similar records, books, or accounts, after such consolidation, such consolidated office shall keep but one set of such records, books, or accounts.

History: En. Sec. 6, Ch. 125, L. 1935; re-en. Sec. 4749.6, R.C.M. 1935; R.C.M. 1947, 16-2506.

7-4-2312. Salary and bond of officer following consolidation. (1) (a) When two or more offices are consolidated under a single officer, such officer shall receive as salary an amount to be determined by the board or boards of county commissioners, but which amount must not be more than 20% higher than the highest salary provided by law to be paid to any officer whose duties he is required to perform by reason of such consolidations.

(b) The board or boards shall, in June of each fourth year, adopt a resolution fixing the salary of such officer for the term beginning with the first Monday in January immediately following the adoption of such resolution.

(2) Such officer shall give a bond in an amount equal to the highest bond required by law of any officer whose duties he is required to perform by reason of such consolidation.

History: En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part).

7-4-2313. Deputies and personnel for consolidated offices. (1) Whenever county offices are consolidated, the officer of the consolidated office may appoint as many deputies as are approved by the board or boards of county commissioners.

(2) The board or boards shall determine the number of deputies, stenographers, and clerks the officers may appoint.

History: En. Sec. 7, Ch. 125, L. 1935; re-en. Sec. 4749.7, R.C.M. 1935; amd. Sec. 1, Ch. 107, L. 1937; amd. Sec. 1, Ch. 104, L. 1941; amd. Sec. 7, Ch. 458, L. 1973; R.C.M. 1947, 16-2507(part); amd. Sec. 7, Ch. 443, L. 1979.

Part 24

Deputy Officers in General

7-4-2401. Deputy officers. (1) Every county and township officer, except justice of the peace, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of his office. All compensation or salary of any deputy or assistant shall be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk.

History: (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2)En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410.

7-4-2402. Authorization to exceed limitation on number of deputy officers. The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

History: Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1,

Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

7-4-2403. Official mention of principal officer includes deputies. Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes his deputies.

History: En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411.

7-4-2404. Limitation on county officer acting as deputy officer. No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

History: En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

7-4-2405. Appointment of deputies in certain counties of seventh class. (1) In any county of the seventh class having less than 2,000 population, there shall not be appointed any deputy county officer or deputy designated by any county officer of such county unless the appointment of such deputy, designating the term of service and compensation thereof, shall be first authorized by the board of county commissioners of such county.

(2) The board shall not approve any compensation in payment for services of any person appointed by or acting under any elected or appointed officer of said county whose appointment, as herein provided, shall not have been authorized and approved by the board of such county.

History: (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708.

Part 25

Compensation and Official Fees

7-4-2501. Compensation of county officers. (1) The county surveyor (if not receiving a salary under 7-4-2812) and the public administrator may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed by law.

(2) All other county officers receive salaries.

(3) The coroner is entitled to receive a salary established prior to July 1 of each year by the board of county commissioners. The salary must be in effect upon the first day of each ensuing fiscal year.

History: En. Sec. 4592, Pol. C. 1895; re-en. Sec. 3113, Rev. C. 1907; re-en. Sec. 4865, R.C.M. 1921; re-en. Sec. 4865, R.C.M. 1935; R.C.M. 1947, 25-202; (3)En. Sec. 1, Ch. 371, L. 1979; amd. Sec. 2, Ch. 371, L. 1979; amd. Sec. 8, Ch. 443, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 371 and Ch. 443, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 443 was a Code Commissioner bill and was not intended to make substantive changes. Consequently a conflict of language in subsection (1) between Ch. 371 and Ch. 443 has been resolved in favor of the language used in Ch. 371.

Compensation plan. Ch. 545, L. 1979, established a County Compensation Board to consider the salaries of elected county officials and present to the Legislature an ongoing salary plan.

7-4-2502. Payment of salaries of county officials and assistants. (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salary of the county attorney is payable monthly, with one-half from the general fund of the county and the other one-half from the state treasury upon the warrant of the state auditor.

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the state auditor, who shall thereafter draw warrants for such salary in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the state auditor, and the auditor shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the same.

History: (1)(a), (2)En. Sec. 4595, Pol. C. 1895; re-en. Sec. 3117, Rev. C. 1907; re-en. Sec. 4868, R.C.M. 1921; amd. Sec. 4, Ch. 141, L. 1925; re-en. Sec. 4868, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1945; Sec. 25-601, R.C.M. 1947; (1)(b)En. Sec. 4603, Pol. C. 1895; re-en. Sec. 3136, Rev. C. 1907; re-en. Sec. 4872, R.C.M. 1921; re-en. Sec. 4872, R.C.M. 1935; Sec. 25-602, R.C.M. 1947; (3)En. Subd. 18, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.17, R.C.M. 1935; Sec. 16-1020, R.C.M. 1947; R.C.M. 1947, 16-1020, 25-601, 25-602(part); amd. Sec. 1, Ch. 109, L. 1979; amd. Sec. 9, Ch. 443, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 109 and Ch. 443, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 109 provided for twice monthly and biweekly paychecks in subsection (1)(a) and in former subsection (1)(b). Ch. 443, a Code Commissioner bill, deleted subsection (1)(b) referring to payment from the contingency fund as inconsistent with subsection (1)(a) referring to payment from the general fund. The composite deleted subsection (1)(b) to avoid the inconsistency. The intent of Ch. 109 is preserved in subsection (1).

7-4-2503. Salary schedule for certain county officers. (1) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county attorney, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties wherein such office is authorized is computed by adding the sum of the salary shown in column A, based on population as of January 1, 1979, to the salary shown in column B, based on taxable valuation as of January 1, 1979, as follows:

(a) Population of County	Column A
Below 3,000	$4,494
3,000 to 3,999	$4,729
4,000 to 4,999	$4,833
5,000 to 5,999	$4,938
6,000 to 6,999	$5,058
7,000 to 7,999	$5,394
8,000 to 8,999	$5,487
9,000 to 9,999	$5,617

10,000 to 12,499	$5,708
12,500 to 14,999	$5,826
15,000 to 17,499	$5,943
17,500 to 19,999	$6,048
20,000 to 24,999	$6,165
25,000 to 29,999	$6,270
30,000 to 39,999	$6,387
40,000 to 49,999	$6,544
50,000 to 59,999	$6,779
60,000 to 69,999	$7,014
70,000 to 79,999	$7,275
80,000 to 89,999	$7,432
90,000 to 99,999	$7,676
100,000 and over	$7,902

(b) Taxable Valuation of County	Column B
Below $2,000,000	$4,598
2,000,000 to 2,999,999	$4,729
3,000,000 to 3,999,999	$4,833
4,000,000 to 4,999,999	$4,938
5,000,000 to 5,999,999	$5,069
6,000,000 to 6,999,999	$5,394
7,000,000 to 7,999,999	$5,487
8,000,000 to 9,999,999	$5,617
10,000,000 to 11,999,999	$5,708
12,000,000 to 13,999,999	$5,826
14,000,000 to 15,999,999	$5,942
16,000,000 to 17,999,999	$6,047
18,000,000 to 19,999,999	$6,165
20,000,000 to 22,499,999	$6,270
22,500,000 to 24,999,999	$6,387
25,000,000 to 29,999,999	$6,544
30,000,000 to 34,999,999	$6,779
35,000,000 to 39,999,999	$7,014
40,000,000 to 44,999,999	$7,275
45,000,000 to 49,999,999	$7,432
50,000,000 to 54,999,999	$7,667
55,000,000 to 59,999,999	$7,902
60,000,000 to 64,999,999	$8,138
65,000,000 to 69,999,999	$8,372
70,000,000 to 74,999,999	$8,607
75,000,000 to 79,999,999	$8,843
80,000,000 to 84,999,999	$9,078
85,000,000 to 89,999,999	$9,313
90,000,000 to 94,999,999	$9,548
95,000,000 to 99,999,999	$9,783
100,000,000 to 109,999,999	$10,019
110,000,000 to 119,999,999	$10,195
120,000,000 to 129,999,999	$10,398
130,000,000 to 139,999,999	$10,606

140,000,000 to 149,999,999	$10,817
150,000,000 to 159,999,999	$11,035
160,000,000 and over	$11,265

(2) (a) The county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $400 per year.

(b) The county sheriff shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $2,000 per year.

(c) Except in counties of population greater than 30,000, the county attorney shall receive, in addition to the salary based upon the totals of column A and B above, the sum of $1,200. In each county with a population in excess of 30,000, the salary of the county attorney shall be $30,000 per year.

(d) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney shall be set by resolution of the county commission but it shall not exceed the salary of the county attorney in a county with a population in excess of 30,000.

History: Ap. p. Sec. 1, Ch. 150, L. 1945; amd. Sec. 1, Ch. 177, L. 1949; amd. Sec. 1, Ch. 118, L. 1951; amd. Sec. 1, Ch. 222, L. 1953; amd. Sec. 1, Ch. 22, L. 1957; amd. Sec. 1, Ch. 66, L. 1959; amd. Sec. 1, Ch. 195, L. 1961; amd. Sec. 1, Ch. 216, L. 1965; amd. Sec. 1, Ch. 231, L. 1967; amd. Sec. 1, Ch. 284, L. 1969; amd. Sec. 1, Ch. 265, L. 1971; amd. Sec. 10, Ch. 391, L. 1973; amd. Sec. 1, Ch. 474, L. 1973; amd. Sec. 1, Ch. 331, L. 1974; amd. Sec. 3, Ch. 102, L. 1975; amd. Sec. 1, Ch. 195, L. 1975; amd. Sec. 1, Ch. 493, L. 1977; Sec. 25-605, R.C.M. 1947; Ap. p. Sec. 4, Ch. 150, L. 1945; amd. Sec. 1, Ch. 91, L. 1947; amd. Sec. 1, Ch. 177, L. 1949; Sec. 25-608, R.C.M. 1947; R.C.M. 1947, 25-605, 25-608; amd. Sec. 1, Ch. 459, L. 1979; amd. Sec. 4, Ch. 669, L. 1979.

7-4-2504. Salaries to be fixed by resolution. (1) The county governing body shall by resolution, on or before July 1, 1979, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and county attorney; the clerk of the district court; the county auditor (if there is one); the county surveyor (if he receives a salary); and the county coroner (if he receives a salary); however, the salary of the elected county official for fiscal year 1980 must be the greater of the amount computed by increasing the salary authorized for that official on June 30, 1979, by 7% or by using the salary schedule in 7-4-2503.

(2) The county governing body shall by resolution on or before July 1, 1980, fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and county attorney; the clerk of the district court; the county auditor (if there is one); the county surveyor (if he receives a salary); and the county coroner (if he receives a salary) for the following fiscal year by increasing the salary authorized for that official on June 30, 1980, by 7%.

History: En. Sec. 1, Ch. 306, L. 1973; R.C.M. 1947, 25-609.1; amd. Sec. 10, Ch. 443, L. 1979; amd. Sec. 2, Ch. 459, L. 1979.

7-4-2505. Amount of compensation for deputies and assistants. (1) Except as provided in subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

(a) sheriff;

(b) clerk and recorder;

(c) clerk of the district court;

(d) treasurer;
(e) assessor;
(f) county attorney;
(g) auditor.

(2) (a) Except as provided in subsection (2)(b), the salary of no deputy or assistant shall be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) In fixing the compensation allowed the undersheriff, the board must fix the same at 95% of the salary of the officers under whom such undersheriff is serving. In fixing the compensation allowed the deputy sheriffs, the board must fix the same at 90% of the salary of the officer under whom such deputy sheriff is serving, except in counties of the first, second, or third class, in which the board must fix the same at not less than 75% or more than 90% of the salary of the officer under whom such deputy sheriff is serving.

(c) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(d) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

History: Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; Ap. p. Sec. 1, Ch. 61, L. 1925; re-en. Sec. 2001.1, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973; amd. Sec. 49, Ch. 566, L. 1977; Sec. 84-402, R.C.M. 1947; R.C.M. 1947, 25-604(part), 84-402(part).

7-4-2506. Affidavit required for deputy to receive salary. The board must not order the payment of the compensation of any deputy until he has signed and filed with the county clerk the following affidavit:

State of Montana
County of ....

I do swear that I have rendered services as deputy .... for the month of ...., 19.., and that I am entitled to receive the full sum of my compensation for the same for my own use and benefit and that I have not paid, deposited, or assigned or contracted to pay, deposit, or assign any part of such compensation for the use of any other person or in any way, directly or indirectly, paid or given or contracted to pay or give any reward or compensation for my appointment to office or the emoluments thereof to my principal or to any other person.

....

Subscribed and sworn to before me this .... day of ...., 19...

....

History: En. Sec. 4610, Pol. C. 1895; re-en. Sec. 3143, Rev. C. 1907; re-en. Sec. 4891, R.C.M. 1921; re-en. Sec. 4891, R.C.M. 1935; R.C.M. 1947, 25-207.

7-4-2507 through 7-4-2510 reserved.

7-4-2511. Collection and disposal of fees. (1) Each salaried county officer must charge and collect for the use of his county and pay into the county treasury on the first Monday in each month all fees now or hereafter allowed by law, paid or chargeable in all cases, except as provided in 25-10-403. Nothing in this subsection applies to the compensation received by the sheriff as mileage while in the performance of official duties or for the board of prisoners or other persons while in his custody.

(2) No salaried county officer may receive for his own use any fees, penalties, or emoluments of any kind, except the salary as provided by law, for any official service rendered by him. Unless otherwise provided, all fees, penalties, and emoluments of every kind collected by a salaried county officer are for the sole use of the county and must be accounted for and paid to the county treasurer as provided by subsection (1) and credited to the general fund of the county.

History: (1)En. Sec. 4606, Pol. C. 1895; re-en. Sec. 3139, Rev. C. 1907; re-en. Sec. 4887, R.C.M. 1921; re-en. Sec. 4887, R.C.M. 1935; Sec. 25-203, R.C.M. 1947; (2)En. Sec. 4591, Pol. C. 1895; re-en. Sec. 3112, Rev. C. 1907; re-en. Sec. 4864, R.C.M. 1921; amd. Sec. 3, Ch. 141, L. 1925; re-en. Sec. 4864, R.C.M. 1935; Sec. 25-201, R.C.M. 1947; (3)En. Sec. 4625, Pol. C. 1895; re-en. Sec. 3158, Rev. C. 1907; re-en. Sec. 4907, R.C.M. 1921; re-en. Sec. 4907, R.C.M. 1935; amd. Sec. 16, Ch. 513, L. 1973; Sec. 25-223, R.C.M. 1947; R.C.M. 1947, 25-201, 25-203, 25-223; amd. Sec. 11, Ch. 443, L. 1979.

7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer on the first Monday of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, duly verified by the officer making the payment.

(2) The affidavit must be in the following form:

State of Montana
County of ....

I, ..., of the county of ...., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ...., 19.., and that this fee book shows the full amount received or chargeable in said month and since my last monthly payment; and neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, which is not fully set out in this fee book; and that the foregoing statement is a full, true, and correct copy thereof.

.... (Signature)

Subscribed and sworn to before me this ... day of ...., 19...
Seal ...... (Person authorized to take oaths)
.... (Title or notarial information)

History: (1), (2)En. Sec. 4607, Pol. C. 1895; re-en. Sec. 3140, Rev. C. 1907; re-en. Sec. 4888, R.C.M. 1921; re-en. Sec. 4888, R.C.M. 1935; Sec. 25-204, R.C.M. 1947; (3)En. Sec. 4626, Pol. C. 1895; re-en. Sec. 3159, Rev. C. 1907; re-en. Sec. 4908, R.C.M. 1921; re-en. Sec. 4908, R.C.M. 1935; amd. Sec. 17, Ch. 513, L. 1973; Sec. 25-224, R.C.M. 1947; R.C.M. 1947, 25-204, 25-224; amd. Sec. 12, Ch. 443, L. 1979.

7-4-2513. Filing of statements and affidavits. The treasurer must file and preserve in his office said statements and affidavits and must issue to the officer one original and one duplicate receipt therefor. The officer receiving said receipts must preserve one in his office and file the duplicate with the county clerk, whereupon the clerk must charge the treasurer with the amount shown by the receipt.

History: En. Sec. 4608, Pol. C. 1895; re-en. Sec. 3141, Rev. C. 1907; re-en. Sec. 4889, R.C.M. 1921; re-en. Sec. 4889, R.C.M. 1935; R.C.M. 1947, 25-205.

7-4-2514. Filing required to receive salary. The board of county commissioners must not order the payment of the salary of any such officer until he has filed the duplicate receipt with the county clerk, properly signed by the treasurer, showing that he has made the statement and settlement for that month, required in this part, and filed the report prescribed in 7-6-2213.

History: En. Sec. 4609, Pol. C. 1895; re-en. Sec. 3142, Rev. C. 1907; re-en. Sec. 4890, R.C.M. 1921; re-en. Sec. 4890, R.C.M. 1935; R.C.M 1947, 25-206.

7-4-2515. Fees to be paid in advance. (1) The officers mentioned in this chapter must not in any case perform any official services unless the fees prescribed for such services are paid in advance. On such payment, the officers must perform the services required. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his official bond.

(2) The county clerk is not bound to record any instrument, file any paper or notice, furnish any copies, or render any service connected with his office until the fee for the same as prescribed by law is, if demanded, paid or tendered.

(3) When any publication is required by law to be made by an officer of any suit, process, notice, order, or other paper, the costs of the same must be first tendered by the party, if demanded, for whom such order of publication was granted before the officer is compelled to make such publication.

History: (1)En. Sec. 4611, Pol. C. 1895; re-en. Sec. 3144, Rev. C. 1907; re-en. Sec. 4892, R.C.M. 1921; re-en. Sec. 4892, R.C.M. 1935; Sec. 25-208, R.C.M. 1947; (2)En. Sec. 4422, Pol. C. 1895; re-en. Sec. 3043, Rev. C. 1907; re-en. Sec. 4809, R.C.M. 1921; Cal. Pol. C. Sec. 4245; re-en. Sec. 4809, R.C.M. 1935; Sec. 16-2915, R.C.M. 1947; (3)En. Sec. 4617, Pol. C. 1895; re-en. Sec. 3150, Rev. C. 1907; re-en. Sec. 4898, R.C.M. 1921; re-en. Sec. 4898, R.C.M. 1935; Sec. 25-214, R.C.M. 1947; R.C.M. 1947, 16-2915, 25-208, 25-214.

7-4-2516. Fees not required in certain cases. No fees must be charged the state, any county, or any subdivision thereof, any public officer acting therefor, or in habeas corpus proceedings for official services rendered, and all such services must be performed without the payment of fees.

History: En. Sec. 4612, Pol. C. 1895; re-en. Sec. 3145, Rev. C. 1907; re-en. Sec. 4893, R.C.M. 1921; re-en. Sec. 4893, R.C.M. 1935; R.C.M. 1947, 25-209.

7-4-2517. Itemized receipt for fees. Every officer, upon receiving any fees for official duty or service, may be required by the person paying the same to make out in writing and deliver to such person a particular account of such fees, specifying for what they accrued, respectively, and must receipt the same. If he refuses or neglects to do so when required, he is liable to the party paying the same in treble the amount so paid.

History: En. Sec. 4614, Pol. C. 1895; re-en. Sec. 3147, Rev. C. 1907; re-en. Sec. 4895, R.C.M. 1921; re-en. Sec. 4895, R.C.M. 1935; R.C.M. 1947, 25-211.

7-4-2518. Statement of fees to be posted. (1) It is the duty of each officer entitled to collect fees to keep posted in his office a plain and legible statement of the fees allowed by law.

(2) A failure to do so subjects the officer to a fine of $100 and costs, to be recovered by the county attorney in the name of the state.

History: En. Sec. 4615, Pol. C. 1895; re-en. Sec. 3148, Rev. C. 1907; re-en. Sec. 4896, R.C.M. 1921; re-en. Sec. 4896, R.C.M. 1935; R.C.M. 1947, 25-212.

7-4-2519. Prohibition upon receiving other fees. The officers named above may receive no other fees for any services performed by them in any action or proceeding or for the performance of any service for which fees are allowed, and the party demanding or receiving any fees not herein allowed is liable to refund the same to the party aggrieved, with treble the amount as damages, in addition to the cost of suit.

History: En. Sec. 4616, Pol. C. 1895; re-en. Sec. 3149, Rev. C. 1907; re-en. Sec. 4897, R.C.M. 1921; re-en. Sec. 4897, R.C.M. 1935; R.C.M. 1947, 25-213; amd. Sec. 13, Ch. 443, L. 1979.

7-4-2520. Misconduct concerning official fees to result in vacancy of office. Upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees or upon proof that the officer collected fees and failed to account for the same, the board of county commissioners must declare his office vacant and appoint his successor.

History: En. Sec. 4629, Pol. C. 1895; re-en. Sec. 3162, Rev. C. 1907; re-en. Sec. 4911, R.C.M. 1921; re-en. Sec. 4911, R.C.M. 1935; R.C.M. 1947, 25-230.

Part 26

Office of County Clerk

7-4-2601. Limitation on number of deputy county clerks. The whole number of deputies allowed the county clerk must not exceed:

(1) six in counties of the first and second classes;
(2) three in counties of the third class;
(3) two in counties of the fourth and fifth classes;
(4) one in counties of the sixth and seventh classes.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part).

7-4-2602. Designation of chief deputy by county clerk. The county clerk in counties of the first class may designate one of his deputy clerks as chief deputy clerk.

History: En. Sec. 1, Ch. 53, L. 1909; re-en. Sec. 4876, R.C.M. 1921; re-en. Sec. 4876, R.C.M. 1935; R.C.M. 1947, 16-3702.

7-4-2603 through 7-4-2610 reserved.

7-4-2611. Role and duties of county clerk. (1) The county clerk of any county is also clerk of the county commissioners and ex officio recorder. Any duty imposed by law upon such officer, either as county clerk, clerk of the county commissioners, or recorder, shall be performed by the county clerk, and any official act performed or certified by the county clerk shall be as valid and effectual as if performed and certified to by him as clerk of the county commissioners or as recorder.

(2) The county clerk must:

(a) take charge of and safely keep or dispose of according to law all books, papers, maps, and records which may be filed or deposited in his office;

(b) record all the proceedings of the board;

(c) make full entries of all its resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

(d) record the vote of each member on any question upon which there is a division or at the request of any member present;

(e) sign all orders made and warrants issued by order of the board for the payment of money and certify the same to the county treasurer;

(f) record the reports of the county treasurer of the receipts and disbursements of the county;

(g) preserve and file all accounts acted upon by the board;

(h) preserve and file all petitions and applications for franchises and record the action of the board thereon;

(i) record all orders levying taxes;

(j) designate upon every account allowed by the board the amount allowed and deliver to any person who may demand it a certified copy of any record in his office or any account on file therein;

(k) as often as a new township is organized or the boundaries of any township are altered, immediately make out and transmit to the secretary of state a certified statement of the names and boundaries and the boundaries of any township altered;

(l) keep such other records and books and perform such other duties as are prescribed by law or by rule or order of the board.

(3) A county clerk and recorder shall file, code, and cross-index all reports and statements filed as prescribed by the commissioner of campaign finances and practices.

(4) A county clerk and recorder shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

History: (1)En. Sec. 4671, Civ. C. 1895; re-en. Sec. 6233, Rev. C. 1907; re-en. Sec. 4813a, R.C.M. 1921; re-en. Sec. 4813.1, R.C.M. 1935; Sec. 16-2920, R.C.M. 1947; (2)Ap. p. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; Ap. p. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; Sec. 16-2901, R.C.M. 1947; Ap. p. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; Sec. 16-908, R.C.M. 1947; Ap. p. Sec. 4426, Pol. C. 1895; re-en. Sec. 3047, Rev. C. 1907; re-en. Sec. 4813, R.C.M. 1921; Cal. Pol. C. Sec. 4205; re-en. Sec. 4813, R.C.M. 1935; Sec. 16-2919, R.C.M. 1947; (3) thru (6)En. 23-4790 by Sec. 15, Ch. 480, L. 1975; Sec. 23-4790, R.C.M. 1947; R.C.M. 1947, 16-908, 16-2901(part), 16-2917(1), 16-2919, 16-2920, 23-4790; amd. Sec. 303, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-4-2612. Books for recording documents. The county clerk, as ex officio recorder, must procure such books for records as the business of his office requires, but orders for the same must first be obtained from the board of county commissioners.

History: En. Sec. 4410, Pol. C. 1895; re-en. Sec. 3031, Rev. C. 1907; re-en. Sec. 4795, R.C.M. 1921; Cal. Pol. C. Sec. 4234; re-en. Sec. 4795, R.C.M. 1935; R.C.M. 1947, 16-2901(part).

7-4-2613. Documents subject to recording. The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) certificates of births and deaths;

(4) wills devising real estate admitted to probate;

(5) official bonds;

(6) transcripts of judgments which by law are made liens upon real estate;

(7) instruments describing or relating to the individual property of married persons;

(8) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(9) notice of preemption claims;

(10) notice and declaration of water rights;

(11) assignments for the benefit of creditors;

(12) affidavits of annual work done on mining claims;

(13) notices of mining locations and declaratory statements;

(14) estrays and lost property;

(15) a book containing appraisement of state lands;

(16) such other writings as are required or permitted by law to be recorded.

History: Ap. p. Sec. 4411, Pol. C. 1895; re-en. Sec. 3032, Rev. C. 1907; amd. Sec. 1, Ch. 68, L. 1917; re-en. Sec. 4796, R.C.M. 1921; Cal. Pol. C. Sec. 4235; re-en. Sec. 4796, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1945; amd. Sec. 1, Ch. 218, L. 1971; amd. Sec. 1, Ch. 199, L. 1975; amd. Sec. 19, Ch. 293, L. 1975; Sec. 16-2902, R.C.M. 1947; Ap. p. Sec. 4414, Pol. C. 1895; re-en. Sec. 3035, Rev. C. 1907; re-en. Sec. 4801, R.C.M. 1921; Cal. Pol. C. Sec. 4238; re-en. Sec. 4801, R.C.M. 1935; Sec. 16-2907, R.C.M. 1947; R.C.M. 1947, 16-2902(part), 16-2907; amd. Sec. 14, Ch. 443, L. 1979; amd. Sec. 1, Ch. 701, L. 1979.

7-4-2614. Records of certificates of discharge from military service. It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person, regardless of sex, who served with the United States forces.

History: En. Sec. 2, Ch. 211, L. 1921; re-en. Sec. 5654, R.C.M. 1921; re-en. Sec. 5654, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1943; Sec. 77-801, R.C.M. 1947; amd. and redes. 16-2927 by Sec. 3, Ch. 94, L. 1974; R.C.M. 1947, 16-2927.

7-4-2615. Records of water users' associations. In each county where water users' associations organized in conformity with the federal reclamation laws of the United States exist, the county commissioners are required to furnish the county recorder with books for the proper recording of stock subscriptions, contracts, articles of incorporation, and stock certificates of such associations, containing printed blank forms of the stock subscriptions, contracts, articles of incorporation, and stock certificates. The forms are to be prepared by the attorney general and used by the county recorder for the recording of all such stock subscriptions, contracts, articles of incorporation, and stock certificates.

History: En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; R.C.M. 1947, 16-1101(part); amd. Sec. 15, Ch. 443, L. 1979.

7-4-2616. Map book. The county clerk must keep a well-bound book which must contain maps of towns, villages, or additions to the same within his county, together with the description, acknowledgment, or other writing thereon.

History: En. Sec. 4416, Pol. C. 1895; re-en. Sec. 3037, Rev. C. 1907; re-en. Sec. 4803, R.C.M. 1921; re-en. Sec. 4803, R.C.M. 1935; R.C.M. 1947, 16-2909.

7-4-2617. Procedure to record documents. (1) When any instrument, paper, or notice authorized by law to be recorded is deposited for record in the office of the county clerk, as ex officio recorder, and accompanied by the required fee, he must endorse upon the same the time it was received, noting the year, month, day, hour, and minute of its reception, and the reception of the instrument must be immediately entered in the county clerk and recorder's reception book.

(2) The county clerk must record said instrument without delay, together with the acknowledgment, proofs, and certificates written upon or annexed to the same and with the plats, surveys, schedule, and other papers thereto annexed, in the order and as of the time when the same was received for record and must note at the foot of the record the exact time of its reception.

(3) The county clerk must also endorse upon each instrument, paper, or notice the time when and the book and pages in which it is recorded and must thereafter deliver it, upon request, to the party leaving the same for record or to his order.

History: (1), (2)En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; Sec. 16-2911, R.C.M. 1947; (3)En. Sec. 4419, Pol. C. 1895; re-en. Sec. 3040, Rev. C. 1907; re-en. Sec. 4806, R.C.M. 1921; Cal. Pol. C. Sec. 4242; re-en. Sec. 4806, R.C.M. 1935; Sec. 16-2912, R.C.M. 1947; R.C.M. 1947, 16-2911(part), 16-2912.

7-4-2618. Addresses required to record certain documents. The county clerk shall not receive for recording any deed, mortgage, or assignment of mortgage unless the post-office address of the grantee, mortgagee, or assignee of the mortgagee, as the case may be, is contained therein. This requirement shall not affect the validity of the record of any instrument which has been or may be recorded.

History: En. Sec. 4418, Pol. C. 1895; re-en. Sec. 3039, Rev. C. 1907; re-en. Sec. 4805, R.C.M. 1921; Cal. Pol. C. Sec. 4241; amd. Sec. 1, Ch. 2, L. 1929; amd. Sec. 1, Ch. 27, L. 1931; re-en. Sec. 4805, R.C.M. 1935; amd. Sec. 1, Ch. 11, L. 1949; R.C.M. 1947, 16-2911(part).

7-4-2619. Indexes to recorded documents. Every county clerk, as ex officio recorder, must keep:

(1) an index of deeds, grants, and transfers and contracts to sell or convey real estate and notices of buyer's interest in real property labeled "Grantors", with each page divided into four columns headed, respectively: "Names of grantors", "Names of grantees", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(2) an index of deeds and notices of buyer's interest in real property labeled "Grantees", with each page divided into four columns headed, respectively: "Names of grantees", "Names of grantors", "Date of deeds, grants, transfers, contracts, or notices", and "Where recorded";

(3) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagors", "Names of mortgagees", "Dates of mortgages", "Where recorded", "When filed", and "When canceled";

(4) an index of mortgages labeled "Mortgages of real property", with each page divided into six columns headed, respectively: "Names of mortgagees", "Names of mortgagors", "Date of mortgage", "Where recorded", "When filed", and "When canceled";

(5) an index of mortgages labeled "Releases of mortgages of real property—Mortgagees", with each page divided into six columns headed, respectively: "Parties whose mortgages are released", "Parties releasing", "Date of release", "Where recorded", "Dates of mortgages released", and "Where mortgages released are recorded";

(6) an index of powers of attorney labeled "Powers of attorney", with each page divided into five columns headed, respectively: "Names of parties executing powers", "To whom powers are executed", "Date of powers", "Date of recording", and "To whom powers are executed";

(7) an index of leases labeled "Leases", with each page divided into four columns headed, respectively: "Names of lessors", "Names of lessees", "Date of leases", and "When and where recorded";

(8) an index of leases labeled "Lessees", with each page divided into four columns headed, respectively: "Names of lessees", "Names of lessors", "Date of leases", and "When and where recorded";

(9) an index of marriage certificates labeled "Marriage certificate—Men", with each page divided into six columns headed, respectively: "Men married", "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(10) an index of marriage certificates labeled "Marriage certificates—Women", with each page divided into six columns headed, respectively: "Women married" (and under this head placing the family names of the women), "To whom married", "When married", "By whom married", "Where married", and "Where certificates are recorded";

(11) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignors", with each page divided into five columns headed, respectively: "Assignors", "Assignees", "Instruments assigned", "Date of assignment", and "When and where recorded";

(12) an index of assignments of mortgages and leases labeled "Assignments of mortgages and leases—Assignees", with each page divided into five columns headed, respectively: "Assignees", "Assignors", "Instruments", "Date of assignment", and "When and where recorded";

(13) an index of wills labeled "Wills", with each page divided into four columns headed, respectively: "Names of testators", "Date of will", "Date of probate", and "When and where recorded";

(14) an index of official bonds labeled "Official bonds", with each page divided into five columns headed, respectively: "Names of officers", "Names of offices", "Date of bond", "Amount of bond", and "When and where recorded";

(15) an index of notices of mechanics' liens labeled "Mechanics' liens", with each page divided into three columns headed, respectively: "Parties claiming liens", "Against whom claimed", and "Notices, when filed";

(16) an index to transcripts of judgments labeled "Transcripts of judgments", with each page divided into seven columns headed, respectively: "Judgment debtors", "Judgment creditors", "Amount of judgment", "Where recovered", "When recovered", "When transcript filed", and "When judgment satisfied";

(17) an index of attachments labeled "Attachments", with each page divided into six columns headed, respectively: "Parties against whom attachments are issued", "Parties issuing attachments", "Notices of attachments", "When filed", and "When attachments discharged";

(18) an index of notices of the pendency of actions labeled "Notices of actions", with each page divided into three columns headed, respectively: "Parties to actions", "Notices, when recorded", and "When filed";

(19) an index of certificates of sale of real estate sold under execution or under orders made in any judicial proceedings labeled "Certificates of sale", with each page divided into four columns headed, respectively: "Plaintiff", "Defendant", "Purchaser at sale", and "Date of sale";

(20) an index of the individual property of married persons labeled "Individual property of married persons", with each page divided into five columns headed, respectively: "Names of married persons", "Names of their spouses", "Nature of instruments recorded", "When recorded", and "Where recorded";

(21) an index to affidavits for annual work done on mining claims labeled "Annual work on mining claims", with each page divided into four columns headed, respectively: "Name of the affiant", "Name of the claim", "Where situated", and "Year when the work was done";

(22) an index of mining claims and declaratory statements labeled "Notices of location of mining claims and declaratory statements", with each page divided into four columns headed, respectively: "Locators", "Name of claim", "Notice, when filed", and "Where recorded";

(23) an index to the register of births and deaths;

(24) an index to notices and declarations of water rights;

(25) an index to the "estray and lost property book";

(26) an index to the record of assignments for the benefit of creditors, containing names of assignor and assignee, date and where recorded, and inventory, when filed;

(27) an index to financing statements as provided in Part 4 of the Uniform Commercial Code—Secured Transactions;

(28) an index to filed subdivision plats, containing number of lots, number of acres, filing date, and the location of the quarter section of each subdivision;

(29) an index to the book of maps and plats, which must contain the name of the proprietor of the town, village, or addition platted and a general description of the same;

(30) a miscellaneous index, in which must be indexed papers not hereinbefore stated.

History: (1) thru (28), (30)En. Sec. 4412, Pol. C. 1895; re-en. Sec. 3033, Rev. C. 1907; re-en. Sec. 4799, R.C.M. 1921; Cal. Pol. C. Sec. 4236; re-en. Sec. 4799, R.C.M. 1935; amd. Sec. 11-111, Ch. 264, L. 1963; amd. Sec. 2, Ch. 199, L. 1975; amd. Sec. 20, Ch. 293, L. 1975; (29)En. Sec. 4413, Pol. C. 1895; re-en. Sec. 3034, Rev. C. 1907; re-en. Sec. 4800, R.C.M. 1921; re-en. Sec. 4800, R.C.M. 1935; Sec. 16-2906, R.C.M. 1947; R.C.M. 1947, 16-2905, 16-2906; amd. Sec. 16, Ch. 443, L. 1979; amd. Sec. 2, Ch. 701, L. 1979.

7-4-2620. Details relating to indexes. (1) The county clerk may keep in the same volume any two or more of the indexes mentioned in 7-4-2619, but the several indexes must be kept distinct from each other, with the volumes distinctly marked on the outside in such way as to show all the indexes kept therein.

(2) The names of the parties in the first column of the several indexes must be arranged in alphabetical order. When a conveyance is executed by a sheriff, the name of the sheriff and the party charged in the execution must both be inserted in the index. When an instrument is recorded to which an executor, administrator, or trustee is a party, the name of such executor, administrator, or trustee, together with the name of the testator or intestate or party for whom the trust is held, must be inserted in the index.

History: En. Sec. 4417, Pol. C. 1895; re-en. Sec. 3038, Rev. C. 1907; re-en. Sec. 4804, R.C.M. 1921; Cal. Pol. C. Sec. 4240; re-en. Sec. 4804, R.C.M. 1935; R.C.M. 1947, 16-2910.

7-4-2621. Search of records. Upon the application of any person and upon the payment or tender of the fees therefor, the county clerk may:

(1) make searches for conveyances, mortgages, and all other instruments, papers, or notices recorded or filed in his office; and

(2) furnish a certificate thereof, stating the names of the parties to such instruments, papers, and notices; the dates thereof; the year, month, day, hour, and minute they were recorded or filed; the extent to which they purport to affect the property to which they relate; and the book and pages where they are recorded.

History: En. Sec. 4420, Pol. C. 1895; re-en. Sec. 3041, Rev. C. 1907; re-en. Sec. 4807, R.C.M. 1921; Cal. Pol. C. Sec. 4243; re-en. Sec. 4807, R.C.M. 1935; R.C.M. 1947, 16-2913.

7-4-2622. Availability of records. All books or records, maps, charts, surveys, and other papers on file in the county clerk's office must be open during office hours for the inspection of any person who may desire to inspect them and may be inspected without charge. The county clerk must arrange the books of record and indexes in his office in such suitable places as to facilitate their inspection.

History: En. Sec. 4423, Pol. C. 1895; re-en. Sec. 3044, Rev. C. 1907; re-en. Sec. 4810, R.C.M. 1921; Cal. Pol. C. Sec. 4246; re-en. Sec. 4810, R.C.M. 1935; R.C.M. 1947, 16-2916.

7-4-2623. Liability of clerk relating to duties as recorder. A county clerk is liable to the party aggrieved for three times the amount of the damages which may be occasioned thereby and is punishable as provided in this code if the county clerk, as ex officio recorder to whom an instrument, proved or acknowledged according to law, or any paper or notice which may be recorded by law is delivered for record:

(1) neglects or refuses to record such instrument, paper, or notice within reasonable time after receiving the same;

(2) records any instruments, papers, or notices untruly or in any other manner than as hereinbefore directed;

(3) neglects or refuses to keep in his office such indexes as are required by this part or to make the proper entries therein;

(4) neglects or refuses to make the searches and to give the certificates required by this part or if such searches or certificates are incomplete or defective when such incompleteness or defect is due to his direct responsibility particularly affecting the property in respect to which it is requested;

(5) alters, changes, or obliterates any records deposited in his office or inserts any new matter therein.

History: En. Sec. 4421, Pol. C. 1895; re-en. Sec. 3042, Rev. C. 1907; re-en. Sec. 4808, R.C.M. 1921; Cal. Pol. C. Sec. 4244; re-en. Sec. 4808, R.C.M. 1935; R.C.M. 1947, 16-2914.

7-4-2624 through 7-4-2630 reserved.

7-4-2631. Fees of county clerk. (1) The county clerks must charge, for the use of their respective counties:

(a) for recording and indexing a written instrument allowed by law to be recorded, except as otherwise provided in 7-4-2632 and 7-4-2633:

(i) (A) for the first folio, 60 cents; and

(B) for each subsequent folio or fraction of one, 30 cents;

(ii) for each entry in index, 20 cents;

(iii) for a certificate that an instrument has been recorded with seal affixed, $1;

(b) for recording and indexing each real estate mortgage or an assignment, renewal, or release of a real estate mortgage:

(i) for each folio, 40 cents;

(ii) for each entry in index, 20 cents;

(iii) for a certificate that the mortgage, assignment, or release has been recorded with seal affixed, $1;

(c) for recording and indexing each certificate of location of a quartz or placer mining claim, millsite claim, or notice of appropriation of water, including a certificate that the instrument has been recorded with seal affixed, $4;

(d) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $2; and

(ii) for each additional mining claim included in it, 50 cents;

(e) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $1;

(f) for filing and indexing each certificate of incorporation or annual statement of a corporation, $2;

(g) for recording and platting each townsite or map:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 10 cents;

(iii) for recording the field notes of survey of a townsite, 50 cents per folio;

(h) for a copy of a record or paper:

(i) for each folio, 30 cents; and

(ii) for each certification with seal affixed, $1;

(i) for searching an index record of files of the office for each year when required in abstracting or otherwise, 30 cents;

(j) for each entry of discharge or satisfaction of a mortgage, lien, or other instrument on the margin of record of it or upon the original instrument and noting the entry in the indexes concerned, 50 cents;

(k) for administering an oath with certificate and seal, no charge;

(l) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(m) for recording and indexing an instrument which may be recorded under 70-21-207 and which pertains to land allotted to an Indian or land within an Indian reservation, except fee patents, no charge;

(n) for filing, indexing, or other services provided for by 30-9-401 through 30-9-407, the fees prescribed in those sections;

(o) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, 50 cents;

(p) for filing an order creating a television district pursuant to 7-13-2509, $3;

(q) for filing, recording, or indexing any other instrument not expressly provided for in this section, 7-4-2632, or 7-4-2633, the same fee provided in this section, 7-4-2632, or 7-4-2633 for a similar service;

(r) for each copy of a birth certificate or a death certificate, $2.

(2) State agencies submitting documents for recording shall pay the recording fees provided for in this section. These fees may be paid by a state agency on a monthly basis.

History: (1) thru (14), (17)En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; Sec. 25-231, R.C.M. 1947; (15)En. Sec. 1, Ch. 68, L. 1909; re-en. Sec. 4467, R.C.M. 1921; re-en. Sec. 4467, R.C.M. 1935; Sec. 16-1101, R.C.M. 1947; (16)En. Sec. 8, Ch. 198, L. 1961; Sec. 70-415, R.C.M. 1947; R.C.M. 1947, 16-1101(part), 25-231(part), 70-415(part); amd. Sec. 1, Ch. 487, L. 1979.

7-4-2632. Fee when recording done by mechanical means. Where recording is done by photographic or similar process, the county clerk and recorder shall charge $2 for each page or fraction of a page of the instrument for filing and indexing.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd.

Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(8).

7-4-2633. Fee for comparison of papers. In all cases where copies of a record or paper are to be certified by the county clerk and the copy is furnished to the clerk for certification, the clerk shall not charge a fee for the comparison of the copy other than the fee of $1 for his certificate and seal.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(part).

7-4-2634. Fees to be noted on recorded documents. On each instrument delivered to him for recording, the county clerk shall endorse on it all charges made for each service, and the endorsement shall be recorded as a part of the instrument in his office in order that the department of community affairs may verify the charges and may see that they have been properly entered on the fee book or reception record in the county clerk's office.

History: En. Sec. 4635, Pol. C. 1895; re-en. Sec. 3168, Rev. C. 1907; amd. Sec. 1, Ch. 117, L. 1911; re-en. Sec. 4917, R.C.M. 1921; re-en. Sec. 4917, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1941; amd. Sec. 1, Ch. 90, L. 1953; amd. Sec. 1, Ch. 202, L. 1955; amd. Sec. 2, Ch. 148, L. 1957; amd. Sec. 1, Ch. 9, L. 1959; amd. Sec. 11-115, Ch. 264, L. 1963; amd. Sec. 73, Ch. 348, L. 1974; amd. Sec. 32, Ch. 213, L. 1975; R.C.M. 1947, 25-231(17).

Part 27

Office of County Attorney

7-4-2701. Qualifications for county attorney in certain counties. No person is eligible for the position of county attorney in counties which have a population in excess of 30,000 unless he is a citizen of the United States who has resided in the state 2 years immediately before taking office and has been admitted to the practice of law for at least 5 years prior to the date of election or appointment.

History: En. 16-3107 by Sec. 2, Ch. 102; L. 1975; R.C.M. 1947, 16-3107.

7-4-2702. Procedure to fill vacancy in office of county attorney. (1) Whenever a vacancy in the office of county attorney shall arise in any county and there is no licensed attorney residing in said county who is eligible to be appointed to fill said vacancy, the board of county commissioners is authorized and has the power to employ special counsel from without the county, who shall be designated and officially known as the "acting county attorney" and who during said employment shall be vested with all the powers and shall perform all the duties of the county attorney, including the filing of all complaints, informations, and/or other proceedings for and in which the county or state may be a party and the prosecution and defense of the same to the same extent and with the same force and effect as if he were the regular qualified county attorney. Said attorney shall be paid a monthly compensation not to exceed the monthly salary of the county attorney. Whenever any such attorney is employed, the county clerk of said county shall certify to the attorney general the name of such acting county attorney and the fact of his employment.

(2) Whenever any licensed attorney shall establish residence in said county and become eligible to hold the office of county attorney, it shall be the duty of the board to appoint such attorney to fill said vacancy, and the employment of said special attorney shall thereupon cease.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

7-4-2703. Limitation on number of deputies. In counties of the first and second class, the county attorney may appoint one chief deputy and one deputy. In all other counties, the county attorney may appoint a chief deputy or a deputy only with the approval of the board of county commissioners.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part); amd. Sec. 17, Ch. 443, L. 1979.

7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for his own services, must not present any claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) In each county with a population in excess of 30,000, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that he may represent himself and his immediate family.

(3) Any deputy county attorney in a county with a population in excess of 30,000 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law except as to those matters in which he has a direct interest.

History: (1)En. Sec. 4453, Pol. C. 1895; re-en. Sec. 3055, Rev. C. 1907; re-en. Sec. 4822, R.C.M. 1921; Cal. Pol. C. Sec. 4258; re-en. Sec. 4822, R.C.M. 1935; Sec. 16-3104, R.C.M. 1947; (2)En. 16-3106 by Sec. 1, Ch. 102, L. 1975; Sec. 16-3106, R.C.M. 1947; (3)En. 16-3108 by Sec. 4, Ch. 102, L. 1975; Sec. 16-3108, R.C.M. 1947; R.C.M. 1947, 16-3104, 16-3106, 16-3108.

7-4-2705. Employment of special counsel in certain counties. Except in counties of the first class, the board of county commissioners has the power, whenever in its judgment the ends of justice or the interest of the county require it, to employ or authorize the county attorney to employ special counsel to assist in the prosecution of any criminal case pending in such county or to represent said county in any civil action in which such county is a party.

History: En. Sec. 4, Ch. 61, L. 1909; re-en. Sec. 4486, R.C.M. 1921; re-en. Sec. 4486, R.C.M. 1935; amd. Sec. 1, Ch. 138, L. 1947; R.C.M. 1947, 16-1126(part).

7-4-2706. County attorney may be full time — resolution — salary. In any county with a population of less than 30,000, the county commissioners may, upon the consent of the county attorney, on July 1 of any year by resolution establish the office of county attorney as a full-time position subject to the provisions of 7-4-2701 and 7-4-2704. The salary for this position is the salary provided by 7-4-2503 for the office of county attorney in a county with a population in excess of 30,000.

History: **En. Sec. 1, Ch. 669, L. 1979.**

7-4-2707. Contract for services of county attorney from another county. The county commissioners of any county may, upon the consent of the county attorney, by agreement with the commissioners and county attorney of any other county, contract in writing to employ any other county attorney or attorney member of his staff to perform civil or criminal legal services for the county at a reasonable rate. The provisions of this section are subject to the provisions of interlocal cooperative agreements.

History: **En. Sec. 2, Ch. 669, L. 1979.**

7-4-2708. Contract for services of any other attorney. In any county, the county commissioners may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal service in connection with the civil business of the county.

History: **En. Sec. 3, Ch. 669, L. 1979.**

7-4-2709 and 7-4-2710 reserved.

7-4-2711. County attorney to be legal advisor of county and other subdivisions. (1) The county attorney is the legal adviser of the board of county commissioners. He must attend their meetings when required and must attend and oppose all claims and accounts against the county which are unjust or illegal. He must defend all suits brought against his county.

(2) The county attorney must:

(a) give, when required and without fee, his opinion in writing to the county, district, and township officers on matters relating to the duties of their respective offices;

(b) act as counsel, without fee, for fire districts in unincorporated territories, towns, or villages within his county; and

(c) when requested by a conservation district pursuant to 76-15-319, act as counsel, without fee.

History: **Ap. p. Sec. 4451, Pol. C. 1895; re-en. Sec. 3053, Rev. C. 1907; re-en Sec. 4820, R.C.M. 1921; Cal. Pol. C. Sec. 4257; re-en. Sec. 4820, R.C.M. 1935; Sec. 16-3102, R.C.M. 1947; Ap. p. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; R.C.M. 1947, 16-3101(part), 16-3102; amd. Sec. 1, Ch. 533, L. 1979.**

7-4-2712. Prosecutorial duties. The county attorney is the public prosecutor and must:

(1) institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses when he has information that such offenses have been committed and for that purpose, whenever not otherwise officially engaged, must attend upon the magistrate in cases of arrest and attend before and give advice to the grand jury whenever cases are presented to them for their consideration;

(2) draw all indictments and informations.

History: **En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).**

7-4-2713. Actions to recover money. The county attorney must prosecute all recognizances forfeited in the courts of record and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2714. Recovery of illegally paid money. Whenever the board of county commissioners, without authority of law, orders any money paid as a salary or fee or for any other purpose and such money has been actually paid or whenever any other county officer has drawn a warrant in his own favor or in favor of any other person without being authorized by the board or by law and the same has been paid, the county attorney is empowered and it is his duty to institute an action in the name of the county against such person to recover the money and 25% damages for the use thereof. No order of the board therefor is necessary to maintain this suit. Whenever the money has not been paid on the order or warrant, it is the duty of the county attorney, upon receiving notice thereof, to commence an action in the name of the county for restraining the payment of the same, and no order of the board is necessary to maintain the action.

History: En. Secs. 4200, 4452, Pol. C. 1895; re-en. Secs. 2880, 3054, Rev. C. 1907; re-en. Secs. 4451, 4821, R.C.M. 1921; re-en. Secs. 4451, 4821, R.C.M. 1935; R.C.M. 1947, 16-812, 16-3103; amd. Sec. 18, Ch. 443, L. 1979.

7-4-2715. Records and reports. The county attorney must:

(1) keep a register of all official business, in which must be entered a note of every action, whether criminal or civil, prosecuted officially and of the proceedings therein;

(2) deliver receipts for money or property received in his official capacity and file duplicates thereof with the county treasurer;

(3) on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(4), (5), (8).

7-4-2716. Duties related to state matters. The county attorney must:

(1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially interested, at all times and in all places within the limits of his county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.

History: En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; R.C.M. 1947, 16-3101(part).

7-4-2717. Other duties. The county attorney must perform such other duties as are prescribed by law.

History: En. Sec. 4454, Pol. C. 1895; re-en. Sec. 3056, Rev. C. 1907; re-en. Sec. 4823, R.C.M. 1921; re-en. Sec. 4823, R.C.M. 1935; R.C.M. 1947, 16-3105.

Part 28

Office of County Surveyor

7-4-2801. Qualifications for county surveyor and deputies. (1) A county surveyor shall be a professional engineer, not less than 22 years of age, who shall have been in active practice of his profession for at least 3 years and who shall have had responsible charge of work as principal or assistant for at least 1 year. Graduation from a school of engineering shall be considered as equivalent to 2 years of active practice.

(2) All deputies must also have a practical knowledge of engineering.

History: En. Sec. 1, Ch. 50, L. 1919; re-en. Sec. 4835, R.C.M. 1921; re-en. Sec. 4835, R.C.M. 1935; R.C.M. 1947, 16-3301.

7-4-2802. Employment of assistants to surveyor. If a party for whom the county survey is made does not furnish the chainmen and markers, the surveyor may employ the necessary chainmen and markers and receive the reasonable hire of all assistants necessarily employed.

History: En. Sec. 4474, Pol. C. 1895; re-en. Sec. 3061, Rev. C. 1907; re-en. Sec. 4843, R.C.M. 1921; Cal. Pol. C. Sec. 4272; re-en. Sec. 4843, R.C.M. 1935; R.C.M. 1947, 16-3309.

7-4-2803. Situations involving use of other surveyors. (1) Whenever the county surveyor is interested in any land the title to which is in dispute and a survey thereof is necessary, the court must direct the survey to be made by some disinterested person. The person so appointed is, for the purpose, authorized to administer and certify oaths. He shall return the survey, verified by his affidavit annexed thereto, and receive for his services the same fees as the county surveyor would be entitled to for similar services.

(2) Whenever the county surveyor neglects, refuses, or is incompetent to perform the duties prescribed in this part, it is the duty of the board of county commissioners to employ another competent civil engineer, who shall be subject to the laws governing the county surveyor.

History: (1)En. Sec. 4475, Pol. C. 1895; re-en. Sec. 3062, Rev. C. 1907; re-en. Sec. 4844, R.C.M. 1921; Cal. Pol. C. Sec. 4275; re-en. Sec. 4844, R.C.M. 1935; Sec. 16-3310, R.C.M. 1947; (2)En. Sec. 4478, Pol. C. 1895; re-en. Sec. 3065, Rev. C. 1907; re-en. Sec. 4847, R.C.M. 1921; re-en. Sec. 4847, R.C.M 1935; Sec. 16-3313, R.C.M 1947; R.C.M. 1947, 16-3310, 16-3313; amd. Sec. 19, Ch. 443, L. 1979.

7-4-2804 through 7-4-2810 reserved.

7-4-2811. Function of county surveyor. (1) The county surveyor shall work under the direction of the board of county commissioners. He shall have no power or authority to incur any indebtedness on the part of the county without the prior order or approval of the board. The county surveyor shall be provided with suitable office, together with necessary equipment, to perform his various duties as prescribed by law.

(2) He shall make all surveys, establish all grades, and prepare plans, specifications, and estimates.

(3) He shall make progress reports and estimates of all work and such other facts in relation thereto as may be required by the board.

History: Ap. p. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; Sec. 16-3302, R.C.M. 1947; Ap. p. Sec. 4, Ch. 50, L. 1919; re-en. Sec. 4838, R.C.M. 1921; re-en. Sec. 4838, R.C.M. 1935; Sec. 16-3304, R.C.M. 1947; R.C.M. 1947, 16-3302(1) thru (3), 16-3304.

7-4-2812. Duties of county surveyor related to roads and bridges in certain counties. (1) The county surveyor of all counties having a total registered vote of 20,000 or over at the last general election shall be responsible for supervision and direction of all highways, bridges, and causeways within his county.

(2) In the exercise of such control, supervision, and direction, he shall:

(a) keep all highways and bridges free and clear of all obstructions;

(b) cause highways to be graded, when needed, and maintain and repair the same;

(c) cause all bridges and causeways to be made, when needed, and keep the same maintained and in good repair and renew the same when destroyed;

(d) make all surveys;

(e) establish grades;

(f) prepare plans, specifications, and estimates;

(g) keep accurate cost data;

(h) approve all claims against the county for all highway, bridge, and causeway construction, maintenance, and repair, prior to presentation to the board of county commissioners;

(i) employ deputies, men, and teams and discharge at his pleasure such deputies, men, and teams and determine how, when, and where such deputies, men, and teams shall work;

(j) purchase and secure all highway and bridge machinery and machinery equipment and tools to be used upon highways and bridges, with the appoval of the board;

(k) purchase and secure all highway, bridge, and causeway supplies and materials, with the approval of the board;

(l) from time to time, make reports and estimates of all matters relating to highways and bridges when required by the board; and

(m) perform such other duties as are now or which may be hereafter required by law.

(3) In the exercise of such control, supervision, and direction, he shall receive the annual salary provided by law for salaried county surveyors and other county officials.

History: En. Sec. 2, Ch. 50, L. 1919; amd. Sec. 1, Ch. 29, Ex. L. 1919; re-en. Sec. 4836, R.C.M. 1921; re-en. Sec. 4836, R.C.M. 1935; amd. Sec. 12-104, Ch. 197, L. 1965; amd. Sec. 1, Ch. 274, L. 1967; R.C.M. 1947, 16-3302(4).

7-4-2813. Maintenance of records. (1) The county surveyor shall keep in his office a record of all surveys and plats made or caused to be made by him, to be recorded in proper books provided for that purpose. He shall also keep on file and for record, in suitable plat books provided therefor, copies of all plats made or caused to be made by him and have recorded therein a description of every public highway within the county.

(2) All such books of record, together with original drawings and original book or books of field notes, calculations, and computations, are and shall remain the property of the county and shall be preserved as such.

History: En. Sec. 3, Ch. 50, L. 1919; re-en. Sec. 4837, R.C.M. 1921; re-en. Sec. 4837, R.C.M. 1935; R.C.M. 1947, 16-3303.

7-4-2814. Preparation of surveys. (1) The county surveyor must make any survey that may be required by order of the court or upon application of any person; keep a correct and fair record of all surveys made by him; number them progressively in the order made; and preserve a copy of the field notes and calculations of each survey and endorse thereon its proper number, a copy of which and a fair and accurate plat, together with the certificate of survey, must be furnished by him to any person upon payment of the fees allowed by law. In all surveys the courses must be expressed according to the true meridian and the variation of the magnetic meridian from the true meridian must be expressed on the plat, with the date of the survey.

(2) He must also keep a correct and plain record of all surveys made by him for the county or for individuals or corporations which pertain to the public roads or bridges, in a book provided for that purpose by the county, which shall be transmitted to his successor in office.

History: Ap. p. Sec. 4470, Pol. C. 1895; re-en. Sec. 3057, Rev. C. 1907; re-en. Sec. 4839, R.C.M. 1921; Cal. Pol. C. Sec. 4268; re-en. Sec. 4839, R.C.M. 1935; Sec. 16-3305, R.C.M. 1947; Ap. p. Sec. 4473, Pol. C. 1895; re-en. Sec. 3060, Rev. C. 1907; re-en. Sec. 4842, R.C.M. 1921; Cal. Pol. C. Sec. 4271; re-en. Sec. 4842, R.C.M 1935; Sec. 16-3308, R.C.M 1947; R.C.M. 1947, 16-3305, 16-3308.

7-4-2815. Surveys involving land in two counties. (1) Any person owning or claiming lands which are divided by county lines and wishing to have the same surveyed may apply to the surveyor of any county in which any part of such land is situated. On such application being made, the county surveyor must make the survey, which is as valid as though the lands were situated entirely within the county.

(2) When land the title to which is in dispute before any court is divided by a county line, the court making an order of survey may direct the order to the surveyor of any county in which any part of the land is situated.

History: (1)En. Sec. 4471, Pol. C. 1895; re-en. Sec. 3058, Rev. C. 1907; re-en. Sec. 4840, R.C.M. 1921; Cal. Pol. C. Sec. 4269; re-en. Sec. 4840, R.C.M. 1935; Sec. 16-3306, R.C.M. 1947; (2)En. Sec. 4472, Pol. C. 1895; re-en. Sec. 3059, Rev. C. 1907; re-en. Sec. 4841, R.C.M. 1921; Cal. Pol. C. Sec. 4270; re-en. Sec. 4841, R.C.M 1935; Sec. 16-3307, R.C.M 1947; R.C.M. 1947, 16-3306, 16-3307.

7-4-2816 through 7-4-2820 reserved.

7-4-2821. Fees of county surveyor. The board of county commissioners shall set the county surveyor's fees by resolution.

History: En. Sec. 4639, Pol. C. 1895; re-en. Sec. 3172, Rev. C. 1907; re-en. Sec. 4921, R.C.M. 1921; re-en. Sec. 4921, R.C.M. 1935; amd. Sec. 1, Ch. 199, L. 1953; R.C.M. 1947, 25-235; amd. Sec. 1, Ch. 232, L. 1979.

Part 29

Office of County Coroner

7-4-2901. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

History: En. 82-444 by Sec. 18, Ch. 530, L. 1977; R.C.M. 1947, 82-444.

7-4-2902. Justice of peace to act as coroner in certain cases. (1) If the office of coroner is vacant or he is absent or unable to attend, the duties of his office may be discharged by any justice of the peace of the county with the like authority and subject to the same obligations and penalties as the coroner.

(2) A justice of the peace acting as coroner is allowed the same salary as the coroner for that portion of time he actually spends discharging the duties of coroner.

History: (1)En. Sec. 4494, Pol. C. 1895; re-en. Sec. 3070, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4289; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3405, R.C.M. 1947; (2)En. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; R.C.M. 1947, 16-3405, 25-236(part); amd. Sec. 3, Ch. 371, L. 1979.

7-4-2903. Stenographer for coroner in certain counties. In each county having a population of 45,000 or more by the latest federal census enumeration, the coroner may, with the consent of the county commissioners, appoint a stenographer. The stenographer shall hold such position during the pleasure of the coroner making the appointment and shall receive as salary a sum to be fixed by the board of county commissioners, to be paid monthly out of the contingent fund of the county upon the order of the board.

History: En. Sec. 1, Ch. 8, L. 1911; re-en. Sec. 4855, R.C.M. 1921; re-en. Sec. 4855, R.C.M. 1935; amd. Sec. 1, Ch. 233, L. 1947; amd. Sec. 1, Ch. 211, L. 1951; R.C.M. 1947, 16-3408.

7-4-2904 through 7-4-2910 reserved.

7-4-2911. Duties of county coroner. (1) The coroner must hold inquests as provided in Title 46, chapter 4, parts 1 and 2.

(2) In the cases specified in 25-3-205, the coroner must discharge the duties of sheriff. If acting as sheriff, the coroner is allowed the same salary as sheriff or the same fees as constable for like services.

History: (1)En. Sec. 4490, Pol. C. 1895; re-en. Sec. 3066, Rev. C. 1907; re-en. Sec. 4848, R.C.M. 1921; Cal. Pol. C. Sec. 4285; re-en. Sec. 4848, R.C.M. 1935; amd. Sec. 22, Ch. 530, L. 1977; Sec. 16-3401, R.C.M. 1947; (2)Ap. p. Sec. 4495, Pol. C. 1895; re-en. Sec. 3071, Rev. C. 1907; re-en. Sec. 4852, R.C.M. 1921; Cal. Pol. C. Sec. 4290; re-en. Sec. 4852, R.C.M. 1935; Sec. 16-3406, R.C.M. 1947; Ap. p. Sec. 4640, Pol. C. 1895; re-en. Sec. 3173, Rev. C. 1907; re-en. Sec. 4922, R.C.M. 1921; amd. Sec. 1, Ch. 59, L. 1933; re-en. Sec. 4922, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1937; amd. Sec. 1, Ch. 211, L. 1951; amd. Sec. 9, Ch. 439, L. 1975; Sec. 25-236, R.C.M. 1947; (3)En. Sec. 1, Ch. 122, L. 1909; re-en. Sec. 4856, R.C.M. 1921; re-en. Sec. 4856, R.C.M. 1935; amd. Sec. 23, Ch. 530, L. 1977; Sec. 16-3409, R.C.M. 1947; R.C.M. 1947, 16-3401, 16-3406, 16-3409, 25-236(part); amd. Sec. 4, Ch. 371, L. 1979; amd. Sec. 20, Ch. 443, L. 1979.

7-4-2912. Coroner's register. The county coroner shall keep an official register, to be labeled "coroner's register", as provided in 46-4-207.

History: En. Sec. 4496, Pol. C. 1895; re-en. Sec. 3072, Rev. C. 1907; re-en. Sec. 4854, R.C.M. 1921; re-en. Sec. 4854, R.C.M. 1935; R.C.M. 1947, 16-3407; amd. Sec. 21, Ch. 443, L. 1979.

7-4-2913. Payment of costs of inquest. Whenever an inquest is held because of the death of an individual confined in the state prison, the county clerk of the county where the inquest is held shall make out a statement of all the costs incurred by the county in the inquest, properly certified by the coroner of the county. This statement shall be sent to the department of institutions for approval, and after approval, the department shall pay the costs out of the money appropriated for the support of the state prison to the county treasurer of the county where the inquest was held.

History: En. Sec. 2, Ch. 122, L. 1909; re-en. Sec. 4857, R.C.M. 1921; re-en. Sec. 4857, R.C.M. 1935; amd. Sec. 86, Ch. 199, L. 1965; R.C.M. 1947, 16-3410; amd. Sec. 22, Ch. 443, L. 1979.

7-4-2914. Statement required before allowing accounts of coroner. Before allowing the accounts of the coroner, the board of county commissioners must require him to file with the clerk of the board a statement, in writing and verified by his affidavit, showing:

(1) the amount of money or other property belonging to the estate of the deceased person which has come into his possession since his last statement;

(2) the disposition made of such property.

History: En. Sec. 4493, Pol. C. 1895; re-en. Sec. 3069, Rev. C. 1907; re-en. Sec. 4851, R.C.M. 1921; Cal. Pol. C. Sec. 4288; re-en. Sec. 4851, R.C.M. 1935; R.C.M. 1947, 16-3404.

7-4-2915. Dead bodies to be held pending investigation. A dead body in the custody of a county coroner shall be held until such time as the coroner after consultation with appropriate law enforcement officials and the county attorney, establishes that it is not necessary to hold the body to determine the reasonable and true cause of death or that the body is no longer necessary to assist any local investigations.

History: En. Sec. 1, Ch. 378, L. 1979.

7-4-2916. Removal of a dead body. (1) If a county does not provide a morgue or morgue facilities for the use of the county coroner, the coroner may use existing hospital facilities for such purposes.

(2) The person lawfully entitled to custody of the deceased person's remains shall be notified of the death as soon as is practicable, and at this time the coroner shall obtain permission to release the body to a funeral home.

(3) A post-mortem examination may be conducted at a funeral home when so ordered by the county coroner.

History: En. Sec. 2, Ch. 378, L. 1979.

7-4-2917 through 7-4-2920 reserved.

7-4-2921. Repealed. Sec. 5, Ch. 371, L. 1979.

7-4-2922. Repealed. Sec. 5, Ch. 371, L. 1979.

7-4-2923. Computation of mileage for reimbursement. When any coroner serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must be allowed for less than 1 mile actually traveled.

History: En. Sec. 4619, Pol. C. 1895; re-en. Sec. 3152, Rev. C. 1907; re-en. Sec. 4900, R.C.M. 1921; re-en. Sec. 4900, R.C.M. 1935; R.C.M. 1947, 25-216(part).

Part 30

Offices of Sheriff, County Treasurer, County Auditor, Public Administrator, County Superintendent of Schools, and Clerk of District Court

7-4-3001. Office of sheriff. The duties and functions of the sheriff's department are provided for in part 21, chapter 32.

History: En. by Code Commissioner, 1979.

7-4-3002. Office of county treasurer. The duties and functions of the treasurer's office are provided for in part 21, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3003. Office of county auditor. The duties and functions of the auditor's office are provided for in part 24, chapter 6.

History: En. by Code Commissioner, 1979.

7-4-3004. Office of public administrator. The powers and duties of the public administrator are defined by Title 72, chapter 15.

History: New section recommended by code commissioner, 1921; re-en. Sec. 4858, R.C.M. 1935; R.C.M.1947, 16-3501.

7-4-3005. Office of county superintendent of schools. The duties and functions of the office of county superintendent of schools are provided for in Title 20.

History: En. by Code Commissioner, 1979.

7-4-3006. Limitation on number of deputy district court clerks. The whole number of deputies allowed the clerk of the district court may not exceed one chief deputy and up to:

(1) six deputies in counties of the first or second class;

(2) four deputies in counties of the third or fourth class having more than one district judge;

(3) two deputies in counties of the third or fourth class having one district judge;

(4) one deputy in counties of the fifth, sixth, or seventh class.

History: En. Sec. 1, Ch. 75, L. 1905; re-en. Sec. 3119, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1909; amd. Sec. 1, Ch. 119, L. 1909; re-en. Sec. 4875, R.C.M. 1921; re-en. Sec. 4875, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1953; R.C.M. 1947, 16-3701(part); amd. Sec. 23, Ch. 443, L. 1979.

Parts 31 through 40 reserved

Part 41

Municipal Officers in General

7-4-4101. Officers of city of first class. (1) The officers of a city of the first class consist of:

(a) one mayor;

(b) two aldermen from each ward;
(c) one city judge.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the city, as hereinafter provided.

(3) There may also be appointed by the mayor, with the advice and consent of the council:
(a) one city attorney;
(b) one city clerk;
(c) one city treasurer or finance officer or one city clerk-treasurer;
(d) one chief of police;
(e) one assessor;
(f) one street commissioner;
(g) one city jailer;
(h) one city surveyor; and
(i) any other officers necessary to carry out the provisions of this title.

(4) The city council may by ordinance prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4740, Pol. C. 1895; re-en. Sec. 3216, Rev. C. 1907; re-en. Sec. 4995, R.C.M. 1921; re-en. Sec. 4995, R.C.M. 1935; R.C.M. 1947, 11-701; amd. Sec. 1, Ch. 447, L. 1979.

7-4-4102. Officers of city of second or third class. (1) The officers of a city of the second or third class consist of:
(a) one mayor;
(b) two aldermen from each ward;
(c) one city judge.

(2) The officers listed in subsection (1), except the city judge for a city of the third class, must be elected by the qualified electors of the city as hereinafter provided.

(3) The governing body of a city of the third class may by ordinance determine whether the office of city judge shall be filled by appointment by the governing body or by election.

(4) There may also be appointed by the mayor, with the advice and consent of the council:
(a) one city attorney;
(b) one city clerk, who is ex officio city assessor;
(c) one city treasurer or one city clerk-treasurer;
(d) one chief of police; and
(e) any other officers necessary to carry out the provisions of this title.

(5) The city council may prescribe the duties of all city officers and fix their compensation.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part); amd. Sec. 2, Ch. 447, L. 1979; amd. Sec. 1, Ch. 506, L. 1979.

7-4-4103. Officers of towns. (1) The officers of a town consist of:
(a) one mayor; and
(b) two aldermen from each ward.

(2) The officers listed in subsection (1) must be elected by the qualified electors of the town, as hereinafter provided.

(3) There may be appointed by the mayor, with the advice and consent of the council:

(a) one clerk, who may be ex officio assessor and tax collector and a member of the council;

(b) one marshal, who may be ex officio street commissioner; and

(c) any other officers necessary to carry out the provisions of this title.

(4) The town council may prescribe the duties of all town officers and fix their compensation, subject to the limitations contained in this title.

History: En. Sec. 4742, Pol. C. 1895; re-en. Sec. 3218, Rev. C. 1907; re-en. Sec. 4997, R.C.M. 1921; re-en. Sec. 4997, R.C.M. 1935; amd. Sec. 1, Ch. 146, L. 1974; R.C.M. 1947, 11-703.

7-4-4104. General qualifications for municipal office. No person is eligible to any municipal office, elective or appointive:

(1) who is not a citizen of the United States; and

(2) who, except for city judges of third-class cities, has not resided in the town or city or an area which has been annexed by such town or city for at least 2 years immediately preceding his election or appointment and is not a qualified elector thereof.

History: En. Sec. 365, 5th Div. Comp. Stat. 1887; amd. Sec. 4752, Pol. C. 1895; re-en. Sec. 3228, Rev. C. 1907; re-en. Sec. 5007, R.C.M. 1921; re-en. Sec. 5007, R.C.M. 1935; amd. Sec. 2, Ch. 76, L. 1961; R.C.M. 1947, 11-713; amd. Sec. 2, Ch. 506, L. 1979.

7-4-4105. Authority to abolish appointive municipal offices. The city or town council may abolish, by a majority vote of the council, any office, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may discharge any officer so appointed.

History: En. Sec. 4744, Pol. C. 1895; re-en. Sec. 3220, Rev. C. 1907; re-en. Sec. 4999, R.C.M. 1921; re-en. Sec. 4999, R.C.M. 1935; R.C.M. 1947, 11-705; amd. Sec. 24, Ch. 443, L. 1979; amd. Sec. 3, Ch. 506, L. 1979.

7-4-4106. Authority to consolidate municipal offices. The city or town council may by ordinance consolidate any of the offices, except that of city judge, the appointment to which is made by the mayor with the advice and consent of the council and may require any of the elected officers to perform any of the duties of an appointed officer whose office has been abolished.

History: En. Sec. 4745, Pol. C. 1895; re-en. Sec. 3221, Rev. C. 1907; re-en. Sec. 5000, R.C.M. 1921; re-en. Sec. 5000, R.C.M. 1935; R.C.M. 1947, 11-706; amd. Sec. 4, Ch. 506, L. 1979.

7-4-4107. Commencement of term of office. (1) The terms of all officers elected at a municipal election are to commence on the first Monday in May after such election.

(2) Officers appointed by the mayor with the advice and consent of the council enter upon their duties within 10 days after receiving notice of their appointment.

History: Ap. p. Sec. 4751, Pol. C. 1895; re-en. Sec. 3227, Rev. C. 1907; re-en. Sec. 5006, R.C.M. 1921; re-en. Sec. 5006, R.C.M. 1935; Sec. 11-712, R.C.M. 1947; Ap. p. Sec. 4759, Pol. C. 1895; re-en. Sec. 3235, Rev. C. 1907; re-en. Sec. 5014, R.C.M. 1921; re-en. Sec. 5014, R.C.M. 1935; Sec. 11-720, R.C.M. 1947; R.C.M. 1947, 11-712, 11-720.

7-4-4108. Oath of office. Each appointed or elected officer of a city or town must take and subscribe the constitutional oath of office before entering upon office.

History: Ap. p. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; Sec. 11-719, R.C.M. 1947; Ap.

p. Sec. 4772, Pol. C. 1895; re-en. Sec. 3248, Rev. C. 1907; re-en. Sec. 5027, R.C.M. 1921; re-en. Sec. 5027, R.C.M. 1935; Sec. 11-733, R.C.M. 1947; R.C.M. 1947, 11-719(part), 11-733.

7-4-4109. Official bond. Each officer of a city or town who is required to give bond shall file the same, duly approved, within 10 days after receiving notice of his election or appointment or, if no notice be received, then on or before the date fixed for the assumption by him of the duties of the office to which he may have been elected or appointed.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part).

7-4-4110. Duties of officers not otherwise provided for. (1) The city or town council has power to prescribe the duties of all officers of the city or town, subject to the limitations mentioned in this code.

(2) The duties of the street commissioner, chief of the fire department, city surveyor, and other city officers not provided in this code may be prescribed by ordinance.

History: (1)En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; Sec. 11-949, R.C.M. 1947; (2)En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R.C.M. 1921; re-en. Sec. 5028, R.C.M. 1935; Sec. 11-734, R.C.M. 1947; R.C.M. 1947, 11-734(part), 11-949(part).

7-4-4111. Determination of vacancy in municipal office. (1) If anyone, either elected or appointed to office, fails for 10 days to qualify as required by law or enter upon his duties at the time fixed by law, then such office becomes vacant.

(2) If any officer absents himself from the city or town continuously for 10 days without the consent of the council or openly neglects or refuses to discharge his duties, such office may be declared vacant by the council.

(3) If any officer removes from the city or town or any alderman from his ward, such office must be declared vacant by the council.

History: En. Sec. 4758, Pol. C. 1895; re-en. Sec. 3234, Rev. C. 1907; re-en. Sec. 5013, R.C.M. 1921; re-en. Sec. 5013, R.C.M. 1935; amd. Sec. 1, Ch. 7, L. 1973; R.C.M. 1947, 11-719(part).

7-4-4112. Filling of vacancy. When any vacancy occurs in any elective office, the council, by a majority vote of the members, may fill the same for the unexpired term and until the qualification of the successor. A vacancy in the office of alderman must be filled from the ward in which the vacancy exists, but if the council shall fail to fill such vacancy before the time for the next election, the qualified electors of such city or ward may nominate and elect a successor to such office.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part).

7-4-4113. Removal of appointed officer. The council, upon written charges to be entered upon their journal, after notice to the party, and after trial by the council, may remove any nonelected officer by vote of two-thirds of all the members-elect.

History: En. Sec. 1, Ch. 72, L. 1903; re-en. Sec. 3236, Rev. C. 1907; re-en. Sec. 5015, R.C.M. 1921; amd. Sec. 1, Ch. 26, L. 1974; R.C.M. 1947, 11-721(part).

7-4-4114. Municipal executive officers. (1) The executive officers of a city or town are the mayor, the marshal (if there is one), and such officers as the council may provide for assessment; collecting, auditing, safekeeping, and disbursing the revenue; and keeping the records and journals of the city or town.

(2) The mayor is the chief executive officer of the city or town.

History: (1)En. Sec. 4780, Pol. C. 1895; re-en. Sec. 3249, Rev. C. 1907; re-en. Sec. 5029, R.C.M. 1921; Cal. Pol. C. Sec. 4385; re-en. Sec. 5029, R.C.M. 1935; Sec. 11-801, R.C.M. 1947; (2)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; R.C.M. 1947, 11-801, 11-802(part); amd. Sec. 25, Ch. 443, L. 1979.

Part 42

Compensation of Municipal Officers

7-4-4201. Salary of officers. The council shall determine by ordinance or resolution the salaries and compensation of elected and appointed city officers and all city employees.

History: (1)En. Sec. 4763, Pol. C. 1895; re-en. Sec. 3239, Rev. C. 1907; re-en. Sec. 5018, R.C.M. 1921; re-en. Sec. 5018, R.C.M. 1935; Sec. 11-724, R.C.M. 1947; (2)En. Sec. 4771, Pol. C. 1895; re-en. Sec. 3247, Rev. C. 1907; re-en. Sec. 5026, R.C.M. 1921; re-en. Sec. 5026, R.C.M. 1935; Sec. 11-732, R.C.M. 1947; (3)En. Sec. 4764, Pol. C. 1895; re-en. Sec. 3240, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1913; re-en. Sec. 5019, R.C.M. 1921; re-en. Sec. 5019, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1943; amd. Sec. 1, Ch. 188, L. 1949; amd. Sec. 1, Ch. 115, L. 1951; amd. Sec. 1, Ch. 76, L. 1953; amd. Sec. 1, Ch. 170, L. 1955; amd. Sec. 1, Ch. 179, L. 1961; amd. Sec. 1, Ch. 142, L. 1963; amd. Sec. 1, Ch. 158, L. 1965; amd. Sec. 1, Ch. 224, L. 1967; amd. Sec. 1, Ch. 297, L. 1969; Sec. 11-725, R.C.M. 1947; (4)En. Sec. 4767, Pol. C. 1895; re-en. Sec. 3243, Rev. C. 1907; re-en. Sec. 5022, R.C.M. 1921; re-en. Sec. 5022, R.C.M. 1935; amd. Sec. 1, Ch. 69, L. 1939; amd. Sec. 1, Ch. 46, L. 1947; amd. Sec. 3, Ch. 76, L. 1953; amd. Sec. 2, Ch. 170, L. 1955; amd. Sec. 3, Ch. 179, L. 1961; amd. Sec. 2, Ch. 142, L. 1963; amd. Sec. 3, Ch. 158, L. 1965; amd. Sec. 1, Ch. 189, L. 1967; Sec. 11-728, R.C.M. 1947; (5)En. Sec. 4768, Pol. C. 1895; re-en. Sec. 3244, Rev. C. 1907; re-en. Sec. 5023, R.C.M. 1921; re-en. Sec. 5023, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1943; amd. Sec. 2, Ch. 188, L. 1949; amd. Sec. 2, Ch. 115, L. 1951; amd. Sec. 4, Ch. 76, L. 1953; amd. Sec. 3, Ch. 170, L. 1955; amd. Sec. 4, Ch. 179, L. 1961; amd. Sec. 4, Ch. 158, L. 1965; amd. Sec. 1, Ch. 155, L. 1967; Sec. 11-729, R.C.M. 1947; (6)En. Sec. 4770, Pol. C. 1895; re-en. Sec. 3246, Rev. C. 1907; amd. Sec. 1, Ch. 14, L. 1917; re-en. Sec. 5025, R.C.M. 1921; re-en. Sec. 5025, R.C.M. 1935; amd. Sec. 1, Ch. 124, L. 1945; amd. Sec. 3, Ch. 188, L. 1949; amd. Sec. 3, Ch. 115, L. 1951; amd. Sec. 5, Ch. 76, L. 1953; amd. Sec. 4, Ch. 170, L. 1955; amd. Sec. 5, Ch. 179, L. 1961; amd. Sec. 5, Ch. 158, L. 1965; amd. Sec. 1, Ch. 156, L. 1967; amd. Sec. 2, Ch. 146, L. 1974; Sec. 11-731, R.C.M. 1947; (7)En. Sec. 4789, Pol. C. 1895; re-en. Sec. 3258, Rev. C. 1907; re-en. Sec. 5028, R.C.M. 1921; re-en. Sec. 5028, R.C.M. 1935; Sec. 11-734, R.C.M. 1947; R.C.M. 1947, 11-724, 11-725(part), 11-728, 11-729, 11-731, 11-732, 11-734(part); amd. Sec. 1, Ch. 221, L. 1979; amd. Sec. 1, Ch. 428, L. 1979; amd. Sec. 26, Ch. 443, L. 1979.

7-4-4202. Minimum salary of chief of police. (1) From and after July 1, 1969, the salary of the chief of police in cities of the first class shall not be less than $650 per month for the first year of service and thereafter at least $650 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(2) From and after July 1, 1957, the annual salary and compensation of the chief of police in cities of the second class shall be not less than $425 per month for the first year of service and thereafter at least $425 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(3) From and after July 1, 1957, the salary and compensation of the chief of police in cities of the third class shall be not less than $325 per month for the first year of service and thereafter at least $325 per month plus 1% of said minimum base monthly salary for each additional year of service up to and including the 20th year of such additional service.

(4) Subject to such minimum, the salary of the chief of police may be increased from time to time by the mayor, subject to the consent and approval of the council.

History: (1), (4)En. Sec. 13, Ch. 136, L. 1907; Sec. 3316, Rev. C. 1907; re-en. Sec. 5107, R.C.M. 1921; re-en. Sec. 5107, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1951; amd. Sec. 1, Ch. 29, L. 1957; amd. Sec. 1, Ch. 356, L. 1969; Sec. 11-1815, R.C.M. 1947; (2), (3)En. Sec. 4769, Pol. C. 1895; re-en. Sec. 3245, Rev. C. 1907; amd. Sec. 1, Ch. 55, L. 1911; re-en. Sec. 5024, R.C.M. 1921; re-en. Sec. 5024, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1943; amd. Sec. 1, Ch. 234, L. 1947; amd. Sec. 1, Ch. 10, L. 1951; amd. Sec. 1, Ch. 30, L. 1957; Sec. 11-730, R.C.M. 1947; R.C.M. 1947, 11-730, 11-1815.

Part 43

Office of Mayor

7-4-4301. Qualifications for mayor. (1) No person is eligible for the office of mayor unless he:

(a) is at least 21 years old;

(b) has been a resident of the state for at least 3 years; and

(c) has been a resident for at least 2 years preceding the election to office of the city or town or an area which has been annexed by the city or town.

(2) The office of mayor of a city or town is considered vacant if the individual elected as mayor ceases to be a resident of the city or town.

History: En. Sec. 8, p. 65, Ex. L. 1887; amd. Sec. 4749, Pol. C. 1895; re-en. Sec. 3225, Rev. C. 1907; re-en. Sec. 5004, R.C.M. 1921; re-en. Sec. 5004, R.C.M. 1935; amd. Sec. 1, Ch. 76, L. 1961; amd. Sec. 1, Ch. 177, L. 1974; R.C.M. 1947, 11-710; amd. Sec. 2, Ch. 420, L. 1979; amd. Sec. 27, Ch. 443, L. 1979.

7-4-4302. Term of office. The mayor shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3324, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

7-4-4303. Powers of mayor related to municipal officers, personnel, and citizens. The mayor has power to:

(1) nominate and, with the consent of the council, appoint all nonelective officers of the city or town provided for by the council, except as provided in this title;

(2) suspend and, with the consent of the council, remove any nonelective officer, stating in the suspension or removal the cause thereof;

(3) supervise the discharge of official duty by all subordinate officers;

(4) require of any of the officers of a city or town an exhibit of such officer's books and papers;

(5) call on every citizen of the city or town over the age of 18 years to aid in the enforcement of the laws and ordinances in case of riot;

(6) call out the militia to aid the mayor in suppressing riots or other disorderly conduct, preventing and extinguishing fires, securing the peace and safety of the city, or carrying into effect any law or ordinance.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4304. Effect of failure to obey call from mayor for assistance. Any person who does not obey a call pursuant to 7-4-4303(5) or (6) forfeits to the city or town a fine not exceeding $25.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-4-4305. Power to grant pardons. The mayor has power to grant pardons and remit fines and forfeitures for offenses against city or town ordinances when in the mayor's judgment public justice would be thereby subserved. The mayor must report all pardons granted, with the reasons therefor, to the next council.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(15).

7-4-4306. Extraterritorial powers. The mayor has power to exercise such power as may be vested in the mayor by ordinance of the city or town, in and over all places within 5 miles of the boundaries of the city or town for the purpose of enforcing the health and quarantine ordinances and regulations thereof.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(17).

Part 44

Office of Alderman

7-4-4401. Qualifications for alderman. No person is eligible for the office of alderman unless he is a resident for at least 60 days preceding the election to office of the ward electing him or of an area which has been annexed by the city or town and placed in the ward.

History: En. Sec. 366, 5th Div. Comp. Stat. 1887; amd. Sec. 4753, Pol. C. 1895; re-en. Sec. 3229, Rev. C. 1907; re-en. Sec. 5008, R.C.M. 1921; re-en. Sec. 5008, R.C.M. 1935; amd. Sec. 3, Ch. 76, L. 1961; amd. Sec. 1, Ch. 144, L. 1967; R.C.M. 1947, 11-714; amd. Sec. 3, Ch. 420, L. 1979; amd. Sec. 28, Ch. 443, L. 1979.

7-4-4402. Term of office. (1) Except as provided in subsection (2), an alderman shall hold office for a term of 4 years and until the qualification of his successor.

(2) At the first annual election held after the organization of a city or town under this title, the electors of the city or town must elect two aldermen from each ward, who must, at the first meeting of the council, decide by lot their terms of office, with one from each ward to hold for a term of

4 years and one, for a term of 2 years and until the qualification of their successors. In the succeeding election and thereafter, one alderman from each ward will be elected for a 4-year term.

History: Ap. p. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; Sec. 11-709, R.C.M. 1947; Ap. p. Sec. 4750, Pol. C. 1895; re-en. Sec. 3226, Rev. C. 1907; re-en. Sec. 5005, R.C.M. 1921; re-en. Sec. 5005, R.C.M. 1935; Sec. 11-711, R.C.M. 1947; R.C.M. 1947, 11-709(part), 11-711; amd. Sec. 29, Ch. 443, L. 1979.

7-4-4403. Officers of city or town council. The council may elect a president, who, in the absence of the mayor, is the presiding officer and may perform the duties of mayor. In the absence of the president, the council may appoint one of its number to act in his place.

History: En. Sec. 4783, Pol. C. 1895; re-en. Sec. 3252, Rev. C. 1907; re-en. Sec. 5032, R.C.M. 1921; re-en. Sec. 5032, R.C.M. 1935; R.C.M. 1947, 11-804.

Part 45

Office of Municipal Clerk

7-4-4501. Duties of city clerk related to administration. It is the duty of the clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council;

(5) take and administer oaths, but must not charge or receive any fees therefor;

(6) perform such other and further duties as the council may prescribe.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4502. Duties of city clerk related to city records and papers. It is the duty of the clerk to:

(1) file and keep all records, books, papers, or property belonging to the city or town and deliver the same to his successor when qualified;

(2) make and certify copies of all records, books, and papers in his possession on the payment of like fees as are allowed county clerks, which fees must be paid into the city treasury;

(3) make and keep a complete index of the journal, ordinance book, finance book, and all other books and papers on file in his office.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4503. City ordinance book. The book required by 7-4-4501(2) is called “The Ordinance Book”.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-4-4504 through 7-4-4510 reserved.

7-4-4511. Duties of town clerk related to administration. It shall be the duty of the town clerk to:

(1) attend all meetings of the council and record and sign the proceedings thereof and all ordinances, bylaws, resolutions, and contracts passed, adopted, or entered into;

(2) enter in a book all ordinances, resolutions, and bylaws passed and adopted by the council;

(3) countersign and cause to be published or posted, as provided by law, all ordinances, bylaws, or resolutions passed and adopted by the council;

(4) sign, number, and keep a record of all licenses, commissions, or permits granted or authorized by the council.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-4-4512. Duties of town clerk related to town records and papers. It shall be the duty of the town clerk to file and keep all records, books, papers, or property belonging to the town and to deliver the same to his successor when qualified.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-4-4513. Town ordinance book. The book required by 7-4-4511(2) is called "The Ordinance Book".

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

Part 46

Office of City Attorney

7-4-4601. Qualifications for city attorney. To be appointed, the city attorney shall be a person who has been licensed to practice as an attorney in this state.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

7-4-4602. Appointment — term of office. (1) The city attorney must be appointed by the mayor, subject to approval by the city council.

(2) The city attorney shall hold his office for 2 years unless suspended or removed as provided by law.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 2, Ch. 428, L. 1979.

7-4-4603. Removal or suspension. The city attorney may be suspended or removed from office by the city council for the neglect, violation, or disregard of the duties required by law or the ordinances of the city.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part).

7-4-4604. Duties. It shall be the duty of the city attorney to attend before the city court and other courts of the city and the district court and prosecute on behalf of the city. He shall, when required, draw, for the use of the council, contracts and ordinances for the government of the city and, when required, give to the mayor or city council written opinions on questions pertaining to the duties and the rights, liabilities, and powers of the corporation. He shall perform such other duties as pertain to the functions of the city council or as the city council may prescribe by resolution.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 3, Ch. 428, L. 1979.

7-4-4605. Employment of special or additional counsel. Nothing in this part shall be taken or construed as preventing the city council from employing in special cases on a contract basis:

(1) the city attorney to perform services not specifically provided for under 7-4-4604; or

(2) additional or other counsel.

History: En. Sec. 6, p. 64, Ex. L. 1887; amd. Sec. 9, p. 182, L. 1889; amd. Sec. 4787, Pol. C. 1895; re-en. Sec. 3256, Rev. C. 1907; re-en. Sec. 5038, R.C.M. 1921; Cal. Pol. C. Sec. 4391; re-en. Sec. 5038, R.C.M. 1935; R.C.M. 1947, 11-811(part); amd. Sec. 4, Ch. 428, L. 1979.

7-4-4606. Legal services for city of third class. A third class city may retain the county attorney to provide legal services for the city in cases not involving a conflict between the interests of the city and the county, either by an interlocal cooperation agreement or by mutual consent by the governing bodies of the city and county.

History: En. Sec. 4741, Pol. C. 1895; re-en. Sec. 3217, Rev. C. 1907; re-en. Sec. 4996, R.C.M. 1921; re-en. Sec. 4996, R.C.M. 1935; amd. Sec. 1, Ch. 24, L. 1975; R.C.M. 1947, 11-702(part).

Part 47

Office of City Treasurer

7-4-4701. Term of office for city treasurer. In cities of the first, second, and third classes, a city treasurer shall hold office for a term of 4 years and until the qualification of his successor.

History: En. Sec. 4, p. 122, L. 1893; amd. Sec. 4748, Pol. C. 1895; re-en. Sec. 3224, Rev. C. 1907; re-en. Sec. 5003, R.C.M. 1921; amd. Sec. 1, Ch. 60, L. 1935; re-en. Sec. 5003, R.C.M. 1935; amd. Sec. 1, Ch. 193, L. 1971; amd. Sec. 1, Ch. 343, L. 1971; R.C.M. 1947, 11-709(part).

CHAPTER 5

GENERAL OPERATION AND CONDUCT OF BUSINESS

Part 1 — Local Government Ordinances, Resolutions, and Initiatives and Referendum

Section
7-5-101. Definition.
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Part 2 — Operation of Consolidated Units of Local Government

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Part 3 — Local Government Elections

7-5-301. Repealed. Sec. 407, Ch. 571, L. 1979.
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7-5-303. Repealed. Sec. 407, Ch. 571, L. 1979.
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7-5-2108. County work week.
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7-5-2122. Meetings of board of county commissioners.
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7-5-2124. Repealed. Sec. 15, Ch. 311, L. 1979.
7-5-2125. Open meetings.
7-5-2126. Attendance at board meetings by sheriff.
7-5-2127. Subpoena power of county commissioners.
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7-5-2129. Certain records to be kept by board.
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7-5-4111. City work week.
7-5-4112. Reports from municipal officers.
Sections 7-5-4113 through 7-5-4120 reserved.
7-5-4121. Conduct of council business.
7-5-4122. Special meetings of council.
7-5-4123. Journal of council proceedings.
7-5-4124. Destruction of old municipal records.
Sections 7-5-4125 through 7-5-4140 reserved.
7-5-4141. Membership in organizations of municipal officers.

7-5-4142. Attendance at meetings and conventions by municipal officers and employees.

Part 42 — Ordinances, Resolutions, and Municipal Initiative and Referendum

7-5-4201. Municipal ordinances.
7-5-4202. Incorporation of technical codes by reference.
7-5-4203. Effective date of ordinances and resolutions.
7-5-4204. Details relating to emergency measures.
7-5-4205. Powers of mayor related to ordinances and resolutions.
7-5-4206. Procedure to veto ordinance or resolution.
7-5-4207. Penalties for violation of municipal ordinances.
Sections 7-5-4208 through 7-5-4210 reserved.
7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 43 — Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts.
7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.
7-5-4303. Exemptions from bidding or advertising requirements for certain contracts.
7-5-4304. Certain contracts to be submitted to voters.
7-5-4305. Prohibition on division of contracts to circumvent bidding requirements.
7-5-4306. Use of installment purchase contract.
7-5-4307. Sale or trade-in of old supplies or equipment.
7-5-4308. Procedure to modify contract.
7-5-4309. Oath of contractor required for payment.
Sections 7-5-4310 through 7-5-4320 reserved.
7-5-4321. Grant of franchise — election required.
7-5-4322. Election on question of granting franchise.

Part 44 — Municipal Elections

7-5-4401. Division of municipalities into wards.
7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 1

Local Government Ordinances, Resolutions, and Initiatives and Referendum

7-5-101. Definition. As used in this part, "chief executive" means the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

History: En. 47A-3-101 by Sec. 13, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-101.

7-5-102. Construction of certain sections. Sections 7-5-103 through 7-5-107 merely provide a procedure for the adoption of ordinances and shall not be construed as granting authority to adopt ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(10).

7-5-103. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject, which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(1) thru (3), (5).

7-5-104. Emergency ordinance. In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(4).

7-5-105. Effective date of ordinance. No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(6).

7-5-106. Ordinance veto procedure. If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to the next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(7).

7-5-107. Register of ordinances and codification. (1) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(2) (a) No later than 1980 and at 5-year intervals thereafter, appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

History: En. 47A-3-102 by Sec. 5, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-102(8), (9).

7-5-108. Adoption and amendment of codes by reference. (1) Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and kept there, available for public use, inspection, and examination. The filing requirements prescribed in this section shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, and inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

History: En. 47A-3-103 by Sec. 6, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-103.

7-5-109. Penalty for violation of ordinance. A local government may fix penalties for the violation of an ordinance which do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

History: En. 47A-3-104 by Sec. 7, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-104.

7-5-110 through 7-5-120 reserved.

7-5-121. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

(3) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(1), (2), (4).

7-5-122. Resolution veto procedure. If the plan of government allows the chief executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the chief executive fails to act, the resolution is approved. If the chief executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(3); amd. Sec. 1, Ch. 311, L. 1979.

7-5-123. Effective date of resolutions. All resolutions shall be immediately effective unless a delayed effective date is specified.

History: En. 47A-3-105 by Sec. 8, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-105(5).

7-5-124 through 7-5-130 reserved.

7-5-131. Right of initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2), may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in 7-5-132 through 7-5-137.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(d) the levy of special assessments pledged for the payment of principal and interest on bonds.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(1), (2).

7-5-132. Procedure to exercise right of initiative or referendum. (1) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(2) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(3) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners or, in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment or, in the case of referendum, set out the ordinance sought to be repealed;

(c) be in the form prescribed in Title 13, chapter 27, except as specifically provided in this part; and

(d) contain the signatures of 15% of the registered electors of the local government.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(3) thru (5); amd. Sec. 299, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-5-133. Processing of petition. (1) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(2) If the governing body does not within 60 days take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).

7-5-134. Determination of number of signatures required for petition. In order to determine the number of signatures needed on a petition to meet the percentage requirements of this part, the number of electors shall be the number of individuals registered to vote at the preceding general election for the local government.

History: En. 47A-3-107 by Sec. 10, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-107.

7-5-135. Suit to determine validity and constitutionality of petition and proposed action. (1) Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form and has sufficient signatures and whether the proposed action would be valid and constitutional.

(2) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the ... day of ....., in the year ...", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein and in addition shall be published.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(part).

7-5-136. Submission of question to electors. (1) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(a) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(b) the governing body calls for a special election on the question.

(2) A special election may not be held sooner than 60 days after the adequacy of the petition is determined by the election administrator or the governing body orders a special election.

(3) If the adequacy of the petition is determined by the election administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election unless a special election is called.

(4) Whenever a measure is ready for submission to the electors, the appropriate election administrator shall in writing notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(5) The question shall be placed on the ballot, giving the electors a choice between accepting or rejecting the proposal.

(6) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared unless otherwise stated in the proposal.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(7); amd. Sec. 300, Ch. 571, L. 1979.

7-5-137. Effect of repeal or enactment of ordinance by initiative or referendum. If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative at any time to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

History: En. 47A-3-106 by Sec. 9, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-106(6)(d).

Part 2

Operation of Consolidated Units of Local Government

7-5-201. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall by ordinance adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 7-1-111 through 7-1-114.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

History: **En. 47A-3-108 by Sec. 11, Ch. 477, L. 1977; R.C.M. 1947, 47A-3-108.**

Part 3

Local Government Elections

7-5-301. Repealed. Sec. 407, Ch. 571, L. 1979.

7-5-302. Repealed. Sec. 407, Ch. 571, L. 1979.

7-5-303. Repealed. Sec. 407, Ch. 571, L. 1979.

7-5-304 through 7-5-310 reserved.

7-5-311. Repealed. Sec. 407, Ch. 571, L. 1979.

Parts 4 through 20 reserved

Part 21

Conduct of County Government

7-5-2101. General authority of county commissioners. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

(2) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to perform all other acts and things required by law not enumerated in this title or which may be necessary to the full discharge of the duties of the chief executive authority of the county government.

History: **(1)En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; Sec. 16-1024, R.C.M. 1947; (2)En. Subd. 25, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.24, R.C.M. 1935; Sec. 16-1027, R.C.M. 1947; R.C.M. 1947, 16-1024(part), 16-1027.**

7-5-2102. Promulgation and enforcement of rules. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to make and enforce such rules for its government, the preservation of order, and the transaction of business as may be necessary.

History: En. Subd. 23, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.22, R.C.M. 1935; R.C.M. 1947, 16-1025.

7-5-2103. Division of county into districts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to divide the counties into township, school, road, and other districts required by law; change the same; and create others as convenience requires by consolidation of two or more townships or otherwise.

History: En. Subd. 2, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.1, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1951; R.C.M. 1947, 16-1002(part).

7-5-2104. Direction of lawsuits. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to direct and control the prosecution and defense of all suits to which the county is a party.

History: En. Subd. 15, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.14, R.C.M. 1935; R.C.M. 1947, 16-1017.

7-5-2105. Authority to contract for printing and supplies. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to contract for the county printing and to provide books and stationery for county officers.

History: En. Subd. 20, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.19, R.C.M. 1935; R.C.M. 1947, 16-1022.

7-5-2106. Control of conflict of interest. No member of the board must be directly or indirectly interested:

(1) in any property purchased for the use of the county;

(2) in any purchase or sale of property belonging to the county; or

(3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

History: En. Sec. 4292, Pol. C. 1895; re-en. Sec. 2951, Rev. C. 1907; re-en. Sec. 4606, R.C.M. 1921; Cal. Pol. C. Sec. 4077; re-en. Sec. 4606, R.C.M. 1935; R.C.M. 1947, 16-1804.

7-5-2107. Employment of personnel by county commissioners. The board of county commissioners may employ such persons as it deems necessary to assist the board in the performance of its duties. Each board may adopt a resolution defining the qualifications, duties, salary, and responsibilities of such persons. Such persons may be paid monthly, twice monthly, or every 2 weeks.

History: En. Sec. 1, Ch. 309, L. 1973; R.C.M. 1947, 16-913; amd. Sec. 2, Ch. 109, L. 1979.

7-5-2108. County work week. All full-time salaried county employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch.

22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

7-5-2109 through 7-5-2120 reserved.

7-5-2121. Administration of oaths. Any member of the board of county commissioners may administer oaths to any persons concerning any matter submitted to them or connected with their powers or duties.

History: En. Sec. 4214, Pol. C. 1895; re-en. Sec. 2885, Rev. C. 1907; re-en. Sec. 4456, R.C.M. 1921; Cal. Pol. C. Sec. 4028; re-en. Sec. 4456, R.C.M. 1935; R.C.M. 1947, 16-905(part).

7-5-2122. Meetings of board of county commissioners. (1) The governing body of the county shall establish by resolution a regular meeting date and notify the public of that date.

(2) The governing body of the county, except as may be otherwise required of them, may meet at the county seat of their respective counties at any time for the purpose of attending to county business. Commissioners may, by resolution and prior 2 days' posted public notice, designate another meeting time and place.

History: En. Sec. 380, 5th Div. Rev. Stat. 1879; amd. Sec. 785, 5th Div. Comp. Stat. 1887; amd. Sec. 4220, Pol. C. 1895; re-en. Sec. 2891, Rev. C. 1907; amd. Sec. 1, Ch. 148, L. 1915; re-en. Sec. 4462, R.C.M. 1921; Cal. Pol. C. Sec. 4032; amd. Sec. 1, Ch. 35, L. 1929; re-en. Sec. 4462, R.C.M. 1935; amd. Sec. 1, Ch. 132, L. 1959; amd. Sec. 5, Ch. 391, L. 1973; amd. Sec. 1, Ch. 27, L. 1975; R.C.M. 1947, 16-910.

7-5-2123. Publication of board proceedings and annual financial statement. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be published in a newspaper:

(a) at the adjournment of each session of the board, a complete list of all claims ordered paid for all purposes, showing the name, purpose, and amount, and a fair summary of the minutes and records of all of its proceedings;

(b) annually, the county clerk's annual statement of the financial condition of the county.

(2) Publication of such minutes and records of proceedings must be made within 21 days after the adjournment of the session. Publication of the financial statement must be made within 30 days after the presentation of the same to the board. The board shall not allow or order paid any claim for any such publication of minutes and records of proceedings or annual financial statement unless made within the time herein prescribed therefor.

History: En. Subd. 21, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.20, R.C.M. 1935; R.C.M. 1947, 16-1023.

7-5-2124. Repealed. Sec. 15, Ch. 311, L. 1979.

7-5-2125. Open meetings. All meetings of the board of county commissioners must be public.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).

7-5-2126. Attendance at board meetings by sheriff. The board of county commissioners has the power to direct the sheriff to attend, in person or by deputy, all the meetings of the board; to preserve order; and to serve notices or citations as directed by the board.

History: En. Sec. 4232, Pol. C. 1895; re-en. Sec. 2896, Rev. C. 1907; re-en. Sec. 4469, R.C.M. 1921; Cal. Pol. C. Sec. 4047; re-en. Sec. 4469, R.C.M. 1935; R.C.M. 1947, 16-1103(part).

7-5-2127. Subpoena power of county commissioners. (1) The board may, by its chairman or the chairman of any committee, issue subpoenas to compel the attendance of any person and the production of any books or papers relating to the affairs of the county, for the purpose of examination upon any matter within its jurisdiction.

(2) When served, a witness is bound to attend and to answer all questions which he would be bound to answer before any court. Disobedience to the subpoena or to an order to attend or to testify may be enforced by the board, and for that purpose, the board has all the powers conferred by and the witness is subject to all the provisions of Title 26, chapter 2, parts 1 and 2; 26-2-303; and Rule 45(c), M.R.Civ.P.

History: (1)En. Sec. 4282, Pol. C. 1895; re-en. Sec. 2941, Rev. C. 1907; re-en. Sec. 4517, R.C.M. 1921, Cal. Pol. C. Sec. 4067; re-en. Sec. 4517, R.C.M. 1935; Sec. 16-1158, R.C.M. 1947; (2)En. Sec. 4283, Pol. C. 1895; re-en. Sec. 2942, Rev. C. 1907; re-en. Sec. 4518, R.C.M. 1921; Cal. Pol. C. Sec. 4068; re-en. Sec. 4518, R.C.M. 1935; Sec. 16-1159, R.C.M. 1947; R.C.M. 1947, 16-1158, 16-1159.

7-5-2128. Fees of officers and witnesses. Neither the officers serving subpoenas nor the witnesses subpoenaed to testify in relation to matters of public concern before the board of county commissioners are entitled to have their fees prepaid, but officers must serve the subpoenas and witnesses must attend without their fees being prepaid. The board must allow the witnesses reasonable compensation for their attendance, but in no case to exceed the amount for like services in courts.

History: En. Sec. 4284, Pol. C. 1895; re-en. Sec. 2943, Rev. C. 1907; re-en. Sec. 4519, R.C.M. 1921; Cal. Pol. C. Sec. 4069; re-en. Sec. 4519, R.C.M. 1935; R.C.M. 1947, 16-1160.

7-5-2129. Certain records to be kept by board. The board of county commissioners must cause to be kept:

(1) a "Minute Book" in which must be recorded all orders and decisions made by them and the daily proceedings had at all regular and special meetings;

(2) a "Road Book" containing all proceedings and adjudications relating to the establishment, maintenance, change, and discontinuance of roads and road districts or relating to road supervisors and their reports and accounts;

(3) a "Franchise Book" containing all franchises granted by them, for what purpose, the length of time and to whom granted, and the amount of bond and license tax required;

(4) a "Warrant Book" in which must be entered, in the order of drawing, all warrants drawn on the treasury, with their number and reference to the order on the minute book and with the date, amount, on what account, and name of payee.

History: En. Sec. 4219, Pol. C. 1895; re-en. Sec. 2890, Rev. C. 1907; re-en. Sec. 4461, R.C.M. 1921; Cal. Pol. C. Sec. 4031; re-en. Sec. 4461, R.C.M. 1935; R.C.M. 1947, 16-909.

7-5-2130. Records to be signed. The records must be signed by the chairman and the clerk.

History: En. Sec. 4217, Pol. C. 1895; re-en. Sec. 2888, Rev. C. 1907; re-en. Sec. 4459, R.C.M. 1921; Cal. Pol. C. Sec. 4029; re-en. Sec. 4459, R.C.M. 1935; R.C.M. 1947, 16-907(part).

7-5-2131. Records to be available to public. The books, records, and accounts must be kept at the office of the clerk, open at all times for public inspection free of charge.

History: En. Sec. 4216, Pol. C. 1895; re-en. Sec. 2887, Rev. C. 1907; re-en. Sec. 4458, R.C.M 1921; Cal. Pol. C. Sec. 4035; re-en. Sec. 4458, R.C.M. 1935; R.C.M 1947, 16-906(part).

7-5-2132. Destruction of old county records. (1) Upon the order of the board of county commissioners and with the approval of the department of community affairs, a county officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county officer after a period of 25 years.

History: (1)En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; Sec. 59-514, R.C.M. 1947; (2)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-514(1), 59-516(part).

7-5-2133 through 7-5-2140 reserved.

7-5-2141. Membership in associations of counties. The boards of county commissioners of the several counties of Montana are hereby authorized and empowered to:

(1) take out county membership in and cooperate with associations and organizations of other counties or county officials of this state and of other states for the furtherance of good government and the protection of county interests; and

(2) pay for such membership in such associations or organizations with county funds.

History: En. Sec. 1, Ch. 104, L. 1947; R.C.M. 1947, 16-1034.

7-5-2142. Membership in associations of clerk and recorders. (1) The county clerk and recorders of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerk and recorders of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerk and recorders of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county clerk and recorders held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: Ap. p. Sec. 1, Ch. 84, L. 1963; Sec. 16-2926, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2926, 25-508(4).

7-5-2143. Membership in associations of clerks of district courts. (1) The county clerks of the district courts of the counties of Montana are hereby authorized and empowered to take out county membership in and to cooperate with associations and organizations of county clerks of the district courts of this state and of other states for the furtherance of good government and the protection of county interests.

(2) All county clerks of the district court of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of clerks of court held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: Ap. p. Sec. 1, Ch. 64, L. 1967; Sec. 16-3006, R.C.M. 1947; Ap. p. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-3006, 25-508(5).

7-5-2144. Membership in associations of county treasurers. (1) County treasurers are authorized and empowered to take out county membership in and to cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. Payment for membership in such associations or organizations shall be made from county funds in such amount as shall be approved by the board of county commissioners.

(2) All county treasurers of the various counties throughout the state shall be allowed actual transportation expenses and per diem allowance for attendance upon any general meeting of the Montana association of county treasurers held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall be paid by such county.

History: (1)En. Sec. 1, Ch. 114, L. 1973; Sec. 16-2627, R.C.M. 1947; (2)En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; Sec. 25-508, R.C.M. 1947; R.C.M. 1947, 16-2627, 25-508(6).

7-5-2145. Attendance at meetings and conventions by county officers and employees. (1) Unless otherwise provided by law, no county officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance at such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

(2) Three members of the board of county commissioners may be allowed actual transportation expenses and per diem for attendance at any general meeting of county commissioners or assessors held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of such association shall also be paid.

(3) County attorneys, sheriffs, and justices of the peace may attend their respective meetings or conventions held within the state and are allowed actual traveling expenses, not more often than once a year, for attending the same.

History: **En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 2, Ch. 311, L. 1979.**

Part 22

Resolutions and County Initiative and Referendum

7-5-2201. Effective date of resolutions. No resolution passed by the board of county commissioners shall become effective until 30 days after its passage except:

(1) general appropriation resolutions providing for the ordinary and current expenses of the county; and

(2) emergency measures.

History: **En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).**

7-5-2202. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members of the board. Emergency resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety.

History: **En. Sec. 3, Ch. 64, L. 1973; R.C.M. 1947, 37-303(part).**

7-5-2203 through 7-5-2210 reserved.

7-5-2211 through 7-5-2222. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 23

County Contracts

7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, no contract for the purchase of any vehicle, road machinery, or other machinery, apparatus, appliances, or equipment or for any materials or supplies of any kind for which must be paid a sum in excess of $10,000 or for the construction of any building, road, or bridge for which must be paid a sum in excess of $10,000 shall be entered into by a county governing body without first publishing a notice calling for bids for furnishing the same.

(2) The notice must be published in the official newspaper of the county at least once a week for 3 consecutive weeks before the date fixed therein for receiving bids.

(3) Every such contract shall be let to the lowest and best responsible bidder.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, on any purchase contract entered into by a county governing body for the purchase of any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum in excess of $4,000 but less than $10,000, bids shall be solicited without advertising from persons, firms, or corporations who have caused to be filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids of prospective suppliers whose names are listed as provided herein, which solicitation shall contain the same information as is required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, such listing may be canceled.

(2) The governing body of the county shall let such contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2303. Use of public auction to make purchase. (1) In lieu of soliciting bids, the governing body may purchase at public auction any vehicle, machinery, appliances, apparatus, building, or materials and supplies for which must be paid a sum less than $10,000.

(2) Compliance with the provisions of this section shall be considered as meeting the requirements of 7-5-2301.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2304. Exemptions from competitive bidding requirements. The provisions of 7-5-2301 and 7-5-2302 shall not apply to contracts for:

(1) public printing entered into in accordance with the provisions of part 24; and

(2) purchases which, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, riot or insurrection, or for the immediate preservation of order or the public health or for the restoration of a condition of usefulness which has been destroyed by accident, wear, tear, or mischief or for the relief of a stricken community overtaken by calamity.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec.

1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(part).

7-5-2305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a county can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a county shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 153, L. 1971; R.C.M. 1947, 16-1803.1.

7-5-2306. Use of installment purchase contracts. When the amount to be paid as the purchase price for any vehicle or road machinery of any kind, for any other machinery, apparatus, appliance, or equipment, or for any materials or supplies of any kind shall exceed $4,000, the county governing body may provide for the payment of such purchase price in installments extending over a period of not more than 5 years, provided that at the time of entering into the agreement for such purchase, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the purchase price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(2).

7-5-2307. Treatment of rental-purchase contracts. Every contract entered into for the rental of machinery, equipment, apparatus, appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and that, after a certain fixed amount has been paid as rental, the property shall become the property of the county or any other similar provisions or conditions shall be deemed and construed to be a contract for sale of such property, and all of the provisions of this part shall apply thereto and govern and control the same.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec. 1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(3).

7-5-2308. Department of administration as purchasing agent. The department of administration may serve as a purchasing agent for the county governing body by mutual consent of both parties.

History: En. Sec. 1, Ch. 8, L. 1933; amd. Sec. 1, Ch. 87, L. 1935; re-en. Sec. 4605.1, R.C.M. 1935; amd. Sec. 1, Ch. 42, L. 1941; amd. Sec. 1, Ch. 128, L. 1951; amd. Sec. 1, Ch. 25, L. 1963; amd. Sec.

1, Ch. 331, L. 1969; amd. Sec. 1, Ch. 127, L. 1973; amd. Sec. 1, Ch. 55, L. 1975; R.C.M. 1947, 16-1803(5).

Part 24

County Printing

7-5-2401. Purpose of part. The purpose of this part is to require the board of county printing to set maximum prices which may be charged for county printing and legal advertising.

History: En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.

7-5-2402. Definition. Unless the context requires otherwise, in this part "board" means the board of county printing provided for in 2-15-1102.

History: En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.1.

7-5-2403. Meetings of board of county printing. The board shall meet annually.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(1).

7-5-2404. Establishment of maximum prices. (1) The board shall adopt and publish a schedule of maximum prices to be charged for county printing and legal advertising. The prices shall be the full prices to be charged and shall include the paper stock specified, completion of all printing and other work, and delivery to the county courthouse.

(2) The board shall conduct hearings when required to determine maximum rates for county printing. Notice of intention to hold a hearing shall be published at least 30 days before the date set for the hearing in a newspaper published in Helena, and a copy shall be mailed to each board of county commissioners.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(2), (4), (5).

7-5-2405. Adoption of printing standards. The board shall adopt necessary standards for sizes, weights, and grades of paper stock, which shall conform to the uniform scale of sizes, weights, and grades used by paper manufacturers, and for sizes and types of printing, ruling, and binding, which shall conform as nearly as possible to the ordinary standards in use in the printing industry. For this purpose, reference may be made to established standards or publications used in this state, and the board may provide for the adoption of a standard list for those items not covered by the prices, regulations, or standards published by the board.

History: En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(3).

7-5-2406 through 7-5-2410 reserved.

7-5-2411. County printing contract. (1) Except as provided in subsection (2), the county commissioners shall contract with one newspaper to do all the printing for the county, including advertising required by law and all printed forms required by the county, at a rate not exceeding that set by the board. The newspaper shall be:

(a) of general circulation;

(b) published at least once a week;

(c) published in the county;

(d) published continuously in the county for the 12 months preceding the awarding of the contract.

(2) In any county in which no newspaper owns or operates a commercial printing establishment, the county commissioners shall and in counties of the first class, the county commissioners may separate the printing contract into two parts, one of which shall provide for the publication of legal advertising only, such contract being let to a legally qualified newspaper, and the other contract shall provide for all printed forms, materials, and supplies required by the county, which contract shall be let to a commercial printing establishment which shall have been in business in the county for at least 1 year.

(3) In no case shall any contract call for payment by the county of any prices in excess of the maximum fixed by the board of county printing.

(4) Nothing in this part shall limit or restrict the power of a board of county commissioners to call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part or to let contracts at prices less than the maximum fixed by the board of county printing.

History: En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974; R.C.M. 1947, 16-1230; amd. Sec. 3, Ch. 364, L. 1979.

Compiler's Comments

Effective date. Sec. 4, Ch. 364, L. 1979, provided: "This act is effective on passage and approval." Approved March 28, 1979.

7-5-2412. Details relating to printing contract. (1) The contract shall be let to the printing establishment that in the judgment of the county commissioners shall be most suitable for performing said work. The county commissioners shall require of any contractor to do such county printing a good and sufficient deposit in such sum as said commissioners may deem advisable, signed by at least two sufficient sureties and conditioned to the effect that said contractor will faithfully perform all of the conditions of said contract in accordance with this part and the terms of such contract.

(2) Nothing in this part shall be construed so as to compel the acceptance of unsatisfactory work.

(3) Such contract for printing shall extend for a period of not more than 2 years. All printing establishments which may receive any contract for printing under this part and which may not be able to execute any part of such contract shall be required to sublet such contract or portion of contract to some printing establishment within the county if such is available and, if not, within the state, which shall do the work under the contract so sublet entirely within the state with Montana labor.

History: En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973; R.C.M. 1947, 16-1231(part).

7-5-2413. Competitive bids required. The board of county commissioners shall call for competitive bids from persons or firms qualified to bid on county printing under the terms of this part.

History: En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973; R.C.M. 1947, 16-1232.

7-5-2414. Exemption for county fairs. None of the provisions of this part applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

History: En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974; R.C.M. 1947, 16-1233.

Part 25

Vacation of Plats

7-5-2501. Vacation of plats in abandoned townsites. (1) When there is filed in the office of the county clerk of any county of this state a plat of any village or townsite or a plat of any vineyard tracts, acreage tracts, suburban tracts, or community tracts and it is desired by the owners of the land to vacate the plat, the county commissioners of the county in which such plat is filed shall, upon petition of the owners of the land described in the plat and upon such conditions as may be reasonable, cancel the plat and shall vacate the lots, streets, alleys, parks, and boulevards, if any, described in the plat. Thereafter the designation of the property shall be by metes and bounds or by legal subdivisions if the circumstances require and the same shall be assessed accordingly. If any post office, store, or other business establishment is located within the platted area, that fact shall not prevent the cancellation and vacating of the plat in accordance with the terms of this section, but in all cases where it is necessary to designate the location of any such post office, store, or other business property by metes and bounds for purposes of identification, this designation shall be made in the order to be entered by the board of county commissioners.

(2) Petitions under the terms of this section shall be signed by all the owners of the land in the platted area, shall distinctly refer to the original plat for purposes of identification, and shall disclose that the petitioners are the owners of all the lands described in the plat and that no rights of any person have intervened since the filing of the plat which would be adversely affected by the cancellation and annulment thereof.

History: En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part); amd. Sec. 3, Ch. 311, L. 1979.

7-5-2502. Vacation of portion of village or townsite. (1) When only a portion of any village or townsite in any unincorporated village or town is sought to be vacated or excluded therefrom and said portion is not less than three blocks in area and is situated at the limits or boundaries of said village or townsite, a verified petition may be filed in the office of the clerk of the district court of the county where said village or townsite is situated by the owner or owners of all the property sought to be vacated or excluded. The petition shall be addressed to the district court of the county, setting forth the description of the portion sought to be excluded and the reason or reasons for desiring such portion to be excluded. A citation shall thereupon be issued by the judge of the court before whom said matter is pending, citing all persons interested in said matter to appear before said court at a time and place specified in said citation, but at a time not less than 3 weeks from the date of said citation. The citation shall be published in a newspaper of regular circulation in the county or, if no such newspaper is in said county, then in such a newspaper located in an adjoining county of the state. The citation shall be published once a week for 2 successive weeks before the date of said hearing.

(2) Upon the hearing of said petition and upon conditions that may seem reasonable, the court may vacate and exclude the portion of said village or townsite as prayed for in said petition, including any streets, alleys, parks, or boulevards upon which no public easement or easements shall vest. Such excluded property shall be described by metes and bounds in the decree of the court, and said property shall be assessed accordingly.

History: **En. Sec. 1, Ch. 6, L. 1907; Sec. 3548, Rev. C. 1907; re-en. Sec. 5308, R.C.M. 1921; amd. Sec. 1, Ch. 54, L. 1929; amd. Sec. 1, Ch. 117, L. 1935; re-en. Sec. 5308, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1951; amd. Sec. 1, Ch. 27, L. 1955; R.C.M. 1947, 11-2803(part).**

7-5-2503. Action by city council required to validate vacation by county commissioners. The action of the county commissioners prior to February 3, 1943, vacating any streets, avenues, alleys, parks, or boulevards within the corporate limits of any incorporated city or town the vacating of which at the time of the action of the county commissioners required action by any city council, shall not be effective for the purpose of vacating any such streets, avenues, alleys, parks, or boulevards unless or until the same are vacated by such city council.

History: **En. Sec. 1, Ch. 13, L. 1943; R.C.M. 1947, 11-2804(part).**

7-5-2504. Vacation of public sites in unincorporated places. Whenever a petition signed by freeholders owning at least two-thirds of the property fronting on any street of any unincorporated townsite in this state shall be presented to the board of county commissioners of the county in which such townsite is situated praying said board to vacate any park, boulevard, or other public place bordering on said street and the adjoining property and not used for road or highway purposes, which park, boulevard, or public place has been dedicated to public use, such board shall hear said petition, and if in its judgment it appears to be for the best interests of the public that such petition be granted, it shall, by order of the board duly entered upon its minutes, declare such park, boulevard, or public place vacated. Thereupon the land included therein shall attach to and become part of the adjoining lots of said townsite, and the title thereto shall pass with conveyance of said lots.

History: **En. Sec. 1, Ch. 60, L. 1907; Sec. 3549, Rev. C. 1907; re-en. Sec. 5309, R.C.M. 1921; re-en. Sec. 5309, R.C.M. 1935; R.C.M. 1947, 11-2805.**

Parts 26 through 40 reserved

Part 41

Conduct of Municipal Government

7-5-4101. General powers of municipal council. The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.

History: En. Sec. 325, 5th Div. Comp. Stat. 1887; amd. Secs. 3, 4, and 5, p. 179, L. 1889; amd. Sec. 1, p. 113, L. 1893; amd. Sec. 4800, Pol. C. 1895; amd. Sec. 1, p. 203, L. 1897; re-en. Sec. 3259, Rev. C. 1907; re-en. Subd. 1, Sec. 5039, R.C.M. 1921; Cal. Pol. C. Sec. 4408; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039, R.C.M. 1935; R.C.M. 1947, 11-901.

7-5-4102. Powers and duties of mayor related to administration and executive function. (1) The mayor has power to:

(a) communicate to the council, at the beginning of every session and more often if considered necessary, a statement of the affairs of the city or town, with such recommendations as the mayor considers proper;

(b) recommend to the council such measures connected with the public health, cleanliness, and ornament of the city or town and the improvement of the government and finances as the mayor considers expedient;

(c) call special meetings of the council;

(d) cause to be presented, once in 3 months, a full statement of the financial condition of the city or town;

(e) bid for the city or town on any property sold at a tax or judicial sale whenever the city or town is an interested party;

(f) procure and have in his custody the seal of the city or town;

(g) take and administer oaths;

(h) perform such other duties as may be prescribed by law or by resolution or ordinance of the council.

(2) The mayor is the presiding officer of the council and must sign the journals thereof and all warrants on the city treasury and decide all ties by his vote. The mayor has no other vote.

History: (1)En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; Sec. 11-802, R.C.M. 1947; (2)En. Sec. 4782, Pol. C. 1895; re-en. Sec. 3251, Rev. C. 1907; re-en. Sec. 5031, R.C.M. 1921; re-en. Sec. 5031, R.C.M. 1935; Sec. 11-803, R.C.M. 1947; R.C.M. 1947, 11-802(part), 11-803; amd. Sec. 4, Ch. 311, L. 1979.

7-5-4103. Council rules and discipline. The council may determine the rules of its proceedings, punish its members for improper conduct, and expel any member for the same by a two-thirds vote of the members elected.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4104. Control of nuisances. The city or town council has power to:

(1) define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control;

(2) regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

History: En. Subds. 33, 81, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Secs. 5039.32, 5039.80, R.C.M. 1935; R.C.M. 1947, 11-935, 11-983.

7-5-4105. Responsibility for mob damage. Every city or town is responsible for injuries to real or personal property within its corporate limits done or caused by mobs or riots.

History: En. Sec. 5036, Pol. C. 1895; re-en. Sec. 3485, Rev. C. 1907; re-en. Sec. 5086, R.C.M. 1921; Cal. Pol. C. Sec. 4452; re-en. Sec. 5086, R.C.M. 1935; R.C.M. 1947, 11-1503.

7-5-4106. Power of condemnation. The city or town council has power to condemn private property for opening, establishing, widening, or altering any street, alley, park, sewer, or waterway in the city or town and for establishing, constructing, and maintaining any sewer, waterway, or drain ditch outside of the corporate limits of the municipality or for any other municipal and public use. The ordinance authorizing the taking of private property for any such use is conclusive as to the necessity of the taking and must conform to and the proceedings thereunder had as provided in Title 70, chapters 30 and 31, concerning eminent domain.

History: En. Subd. 75, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.74, R.C.M. 1935; R.C.M. 1947, 11-977.

7-5-4107. Municipal census. The city or town council has power to take a census of the inhabitants of a city or town at any time.

History: En. Subd. 77, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.76, R.C.M. 1935; R.C.M. 1947, 11-979.

7-5-4108. Municipal printing contract. The city or town council has power to provide for the city or town printing. The contract for city or town printing must be let annually to the lowest bidder.

History: En. Subd. 78, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.77, R.C.M. 1935; R.C.M. 1947, 11-980.

7-5-4109. Control of conflict of interest. The mayor, any member of the council, any city or town officer, or any relative or employee thereof must not be directly or indirectly interested in the profits of any contract entered into by the council while he is or was in office.

History: En. Sec. 345, 5th Div. Comp. Stat. 1887; amd. Sec. 4806, Pol. C. 1895; re-en. Sec. 3277, Rev. C. 1907; re-en. Sec. 5069, R.C.M. 1921; re-en. Sec. 5069, R.C.M. 1935; R.C.M. 1947, 11-1201.

7-5-4110. Compensation and duties of city employees. The city or town council has power to fix the compensation and to prescribe the duties of all employees of the city or town, subject to the limitations mentioned in this code.

History: En. Subd. 47, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.46, R.C.M. 1935; R.C.M. 1947, 11-949(part).

7-5-4111. City work week. All full-time salaried city employees shall work a minimum of 40 hours per week.

History: En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part).

7-5-4112. Reports from municipal officers. The city or town council has power to require from an officer at any time a report in detail of the transactions in his office or any matter connected therewith.

History: En. Subd. 60, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.59, R.C.M. 1935; R.C.M. 1947, 11-962.

7-5-4113 through 7-5-4120 reserved.

7-5-4121. Conduct of council business. (1) A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated and may compel the attendance of absent members, under such rules and penalties as the council may prescribe.

(2) The ayes and noes must be called and recorded on the final passage of any ordinance, bylaw, or resolution or the making of any contract. The voting on the election or appointment of any officer must be viva voce. A majority of the whole number of the members elected is requisite to appoint or elect an officer, and such vote must be recorded.

History: (1)En. Sec. 4801, Pol. C. 1895; re-en. Sec. 3261, Rev. C. 1907; re-en. Sec. 5052, R.C.M. 1921, Cal. Pol. C. Sec. 4406; re-en. Sec. 5052, R.C.M. 1935; Sec. 11-1012, R.C.M 1947; (2)En. Secs. 333-337-347, 5th Div. Comp. Stat. 1887; amd. Secs. 2 and 6, pp. 122, 126, L. 1893; amd. Sec. 4803, Pol. C. 1895; re-en. Sec. 3263, Rev. C. 1907; re-en. Sec. 5054, R.C.M. 1921; re-en. Sec. 5054, R.C.M. 1935; Sec. 11-1014, R.C.M. 1947; R.C.M. 1947, 11-1012, 11-1014.

7-5-4122. Special meetings of council. When a special meeting of the council is called under 7-5-4102(1)(c), the mayor must state by message the object of the meeting, and the business of the meeting must be restricted to the object stated.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4123. Journal of council proceedings. The council must cause a journal of the proceedings to be kept, which must be open to inspection.

History: En. Sec. 4802, Pol. C. 1895; re-en. Sec. 3262, Rev. C. 1907; re-en. Sec. 5053, R.C.M. 1921; Cal. Pol. C. Sec. 4407; re-en. Sec. 5053, R.C.M. 1935; R.C.M. 1947, 11-1013(part).

7-5-4124. Destruction of old municipal records. (1) Except as provided in subsection (2), upon the order of the city or town council or commission and with the approval of the department of community affairs, a city or town officer may destroy old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent records.

(2) Records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of community affairs after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.

(3) Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any city or town officer after a period of 25 years.

History: (1), (2)En. Sec. 3, Ch. 92, L. 1935; re-en. Sec. 455.3, R.C.M. 1935; amd. Sec. 1, Ch. 65, L. 1974; amd. Sec. 80, Ch. 348, L. 1974; amd. Sec. 37, Ch. 213, L. 1975; Sec. 59-515, R.C.M. 1947; (3)En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; Sec. 59-516, R.C.M. 1947; R.C.M. 1947, 59-515, 59-516(part).

7-5-4125 through 7-5-4140 reserved.

7-5-4141. Membership in organizations of municipal officers. (1) The governing body of a city or town may pay:

(a) the membership fees and dues in any organization of city and town officials when the purpose of the organization is improvement of laws relating to city and town government and their better and more economical administration; and

(b) the necessary expenses of any regular officer or employee of the city or town in attending any convention or meeting of such organization upon the direction of the governing body by order upon its minutes, stating that the public interest requires such attendance.

(2) The payment of membership fees, dues, and/or expenses is to be made from such fund of the city or town as the governing body shall direct in the order, with the claim presented, audited, and allowed as are other claims against the city or town.

History: **En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(3); amd. Sec. 5, Ch. 311, L. 1979.**

7-5-4142. Attendance at meetings and conventions by municipal officers and employees. Unless otherwise provided by law, no city officer or employee may receive payment from any public funds for traveling expenses or other expenses of any sort for attendance at any convention, meeting, or other gathering of public officers except for attendance upon such convention, meeting, or other gathering as the officer or employee may by virtue of his office find it necessary to attend.

History: **En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 6, Ch. 311, L. 1979.**

Part 42

Ordinances, Resolutions, and Municipal Initiative and Referendum

7-5-4201. Municipal ordinances. (1) The style of ordinances may be as follows: "Be it ordained by the council of the city of .... (or town of ....)", and all ordinances may be published or posted as prescribed by the council.

(2) All ordinances, bylaws, and resolutions must be passed by the council and approved by the mayor or the person acting in his stead and must be recorded in a book kept by the clerk, called "The Ordinance Book", and numbered by numerical decimal system in the order in which they are passed or codified.

(3) No ordinance shall be passed containing more than one subject, which shall be clearly expressed in its title, except ordinances for the codification and revision of ordinances.

History: **(1)En. Sec. 4804, Pol. C. 1895; re-en. Sec. 3264, Rev. C. 1907; re-en. Sec. 5055, R.C.M. 1921; re-en. Sec. 5055, R.C.M. 1935; Sec. 11-1101, R.C.M. 1947; (2), (3)En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd.**

Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1101, 11-1102(part).

7-5-4202. Incorporation of technical codes by reference. (1) The governing body of an incorporated city or town may adopt technical building, zoning, health, electrical, fire, and plumbing codes in whole or in part by reference.

(2) At least 15 days prior to final action by a governing body of the city or town, notice of intent to adopt a technical code in whole or in part by reference shall be published in a newspaper of general circulation in the city or town. Three copies of the code or part to be adopted shall be filed with the clerk of the city or town for inspection by the public.

(3) If a technical code or part of a code is adopted by reference, a record in "The Ordinance Book" may be made by recording the ordinance without setting forth the provisions of the code or part of a code adopted.

History: En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; R.C.M. 1947, 11-1102(2), (3).

7-5-4203. Effective date of ordinances and resolutions. No ordinance or resolution passed by the council of any city or town may become effective until 30 days after its passage except:

(1) general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

(2) emergency measures.

History: (1)En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; Sec. 11-1106, R.C.M. 1947; (2) En. Sec. 4805, Pol. C. 1895; re-en. Sec. 3265, Rev. C. 1907; re-en. Sec. 5056, R.C.M. 1921; re-en. Sec. 5056, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1967; amd. Sec. 1, Ch. 231, L. 1969; amd. Sec. 1, Ch. 111, L. 1975; Sec. 11-1102, R.C.M. 1947; R.C.M. 1947, 11-1102(part), 11-1106(part); amd. Sec. 7, Ch. 311, L. 1979.

7-5-4204. Details relating to emergency measures. In the case of emergency measures, the emergency must be expressed in the preamble or in the body of the measure and the measure must receive a two-thirds vote of all the members elected. In emergency ordinances, the resolutions shall include only such measures as are immediately necessary for the preservation of peace, health, and safety and shall not include:

(1) a franchise or license to a corporation or individual;

(2) any provisions for the sale of real estate;

(3) any lease or letting of any property for a period exceeding 1 year; or

(4) the purchase or sale of personal property exceeding $5,000 in value.

History: En. Ch. 167, L. 1907; Sec. 3268, Rev. C. 1907; re-en. Sec. 5060, R.C.M. 1921; re-en. Sec. 5060, R.C.M. 1935; R.C.M. 1947, 11-1106(part).

7-5-4205. Powers of mayor related to ordinances and resolutions. The mayor has power to:

(1) cause the ordinances of the city or town to be executed;

(2) approve all ordinances and resolutions of the council adopted by it;

(3) veto any objectionable part of a resolution or ordinance and approve the other parts.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4206. Procedure to veto ordinance or resolution. (1) In case an ordinance or resolution does not meet the mayor's approbation, the mayor has power to return the same to the next regular meeting of the council, with all objections in writing. No ordinance or resolution so vetoed by the mayor must go into effect unless the same be afterwards passed by two-thirds vote of the whole number of members of the council.

(2) If the mayor fails to return any resolution or ordinance as aforesaid, the same takes effect without further action.

History: En. Sec. 367, 5th Div. Comp. Stat. 1887; amd. Sec. 13, p. 126, L. 1893; amd. Sec. 4781, Pol. C. 1895; re-en. Sec. 3250, Rev. C. 1907; re-en. Sec. 5030, R.C.M. 1921; Cal. Pol. C. Sec. 4386; re-en. Sec. 5030, R.C.M. 1935; amd. Sec. 1, Ch. 535, L. 1975; R.C.M. 1947, 11-802(part).

7-5-4207. Penalties for violation of municipal ordinances. The city or town council has power to impose fines and penalties for the violation of any city ordinance, but no fine or penalty may exceed $500 and no imprisonment may exceed 6 months for any one offense.

History: En. Subd. 48, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.47, R.C.M. 1935; amd. Sec. 1, Ch. 202, L. 1974; R.C.M. 1947, 11-950.

7-5-4208 through 7-5-4210 reserved.

7-5-4211 through 7-5-4225. Repealed. Sec. 407, Ch. 571, L. 1979.

Part 43

Municipal Contracts and Franchises

7-5-4301. Power to enter and execute contracts. (1) The city or town council has power to make any and all contracts necessary to carry into effect the powers granted by this code and to provide for the manner of executing the same.

(2) All necessary contracts for professional, technical, engineering, and legal services are excluded from the provisions of 7-5-4302 through 7-5-4304, 7-5-4306, and 7-5-4307.

History: (1)En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.62, R.C.M. 1935; Sec. 11-965, R.C.M. 1947; (2)En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; Sec. 11-1202, R.C.M. 1947; R.C.M. 1947, 11-965, 11-1202(part).

7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts. (1) Except as provided in 7-5-4303, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment, for any materials or supplies of any kind, or for construction for which must be paid a sum exceeding $4,000 must be let to the lowest responsible bidder after advertisement for bids.

(2) Such advertisement shall be made in the official newspaper of the city or town if there be such official newspaper, and if not, it shall be made in

a daily newspaper of general circulation published in the city or town if there be such and, otherwise, by posting in three of the most public places in the city or town. Such advertisement, if by publication in a newspaper, shall be made once each week for 2 consecutive weeks, and the second publication shall be made not less than 5 days or more than 12 days before the consideration of bids. If such advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of such advertisement and the day set for considering bids.

(3) The council may postpone action as to any such contract until the next regular meeting after bids are received in response to such advertisement and may reject any and all bids and readvertise as provided herein.

History: **En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).**

7-5-4303. Exemptions from bidding or advertising requirements for certain contracts. (1) The provisions of 7-5-4302 as to advertisement for bids shall not apply upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, insurrection, or other similar emergency, but in such case the council may proceed in any manner which, in the judgment of three-fourths of the members of the council present at the meeting, duly recorded in the minutes of the proceedings of the council by aye and nay vote, will best meet the emergency and serve the public interest. Such emergency shall be declared and recorded at length in the minutes of the proceedings of the council at the time the vote thereon is taken and recorded.

(2) When there are sufficient funds in the budget for supplies or equipment, a city or town may, without bid, purchase such supplies or equipment from government agencies available to cities or towns when the same can be purchased by such city or town at a substantial saving to such city or town.

History: **En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).**

7-5-4304. Certain contracts to be submitted to voters. No contract may be let extending over a period of 5 years or more without first submitting the question to a vote of the electors of the city or town.

History: **En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part); amd. Sec. 8, Ch. 311, L. 1979.**

7-5-4305. Prohibition on division of contracts to circumvent bidding requirements. Whenever any law of this state provides a limitation upon the amount of money that a city or town can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a city or town shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder, which by its nature or character is integral to such public work or construction project or serves to accomplish one of the basic purposes or functions thereof, into several contracts or separate work orders or by any similar device.

History: En. Sec. 1, Ch. 183, L. 1971; R.C.M. 1947, 11-1202.1.

7-5-4306. Use of installment purchase contract. (1) Subject to the requirements of subsection (2), when the amount to be paid under any such contract shall exceed $4,000, the council may provide for the payment of such an amount in installments extending over a period of not more than 5 years; provided that at the time of entering into such contract, there shall be an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of such portion of the contract price as is payable during the then-current fiscal year and the budget for each following year in which any portion of such purchase price is to be paid shall contain an appropriation for the purpose of paying the same.

(2) When such amount is extended over a term of 2 years, at least 40% thereof shall be paid the first year and the remainder the second year. When such amount is extended over a term of 3 years, at least one-third thereof shall be paid each year. If such amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If such amount is extended over a term of 5 years, at least one-fifth is to be paid each year.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4307. Sale or trade-in of old supplies or equipment. Old supplies or equipment may be sold by the city or town to the highest responsible bidder after calling for bid purchasers as herein set forth for bid sellers, and such city or town may trade in supplies or old equipment on new supplies or equipment at such bid price as will result in the lowest net price.

History: En. Sec. 1, Ch. 48, L. 1907; Sec. 3278, Rev. C. 1907; re-en. Sec. 5070, R.C.M. 1921; amd. Sec. 1, Ch. 22, L. 1927; re-en. Sec. 5070, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1939; amd. Sec. 1, Ch. 59, L. 1941; amd. Sec. 1, Ch. 153, L. 1947; amd. Sec. 1, Ch. 139, L. 1949; amd. Sec. 1, Ch. 220, L. 1959; amd. Sec. 1, Ch. 26, L. 1963; amd. Sec. 1, Ch. 121, L. 1969; amd. Sec. 1, Ch. 371, L. 1971; R.C.M. 1947, 11-1202(part).

7-5-4308. Procedure to modify contract. (1) When it becomes necessary in the prosecution of any work to make alterations or modifications of the specifications or plans of a contract, such alteration or modification must only be made by resolution of the council. Such resolution is of no effect until the price to be paid for the same is agreed to in writing and signed by the contractor and approved by the council.

(2) No contractor must be allowed anything for extra work caused by an alteration or modification unless a resolution is made and an agreement signed as provided in subsection (1). He must not in any case be allowed more for such alteration than the price fixed by such agreement.

History: En. Secs. 4809, 4810, Pol. C. 1895; re-en. Secs. 3280, 3281, Rev. C. 1907; re-en. Secs. 5072, 5073, R.C.M. 1921; re-en. Secs. 5072, 5073, R.C.M. 1935; R.C.M. 1947, 11-1204, 11-1205.

7-5-4309. Oath of contractor required for payment. No money must be paid to any person claiming under a contract with the council until such person has first filed with the clerk a statement under oath disclosing the names of all persons directly or indirectly interested in the contract or the proceeds or profits thereof and declaring that no persons other than those named are interested and that no person forbidden by this title has any interest in the same.

History: En. Sec. 4808, Pol. C. 1895; re-en. Sec. 3279, Rev. C. 1907; re-en. Sec. 5071, R.C.M. 1921; re-en. Sec. 5071, R.C.M. 1935; R.C.M. 1947, 11-1203.

7-5-4310 through 7-5-4320 reserved.

7-5-4321. Grant of franchise — election required. (1) The council may not grant a franchise or special privilege to any person except in the manner specified in subsection (2). The powers of the council are only those expressly prescribed by law and those necessarily incident thereto.

(2) No franchise for any purpose may be granted by any city or town or by the mayor or city council thereof to any person, association, or corporation without first submitting the application therefor to the electors of the city.

History: (1)En. Sec. 4813, Pol. C. 1895; re-en. Sec. 3290, Rev. C. 1907; amd. Sec. 1, Ch. 29, L. 1921; re-en. Sec. 5074, R.C.M. 1921; re-en. Sec. 5074, R.C.M. 1935; Sec. 11-1206, R.C.M. 1947; (2)En. Sec. 1, Ch. 85, L. 1903; re-en. Sec. 3291, Rev. C. 1907; re-en. Sec. 5075, R.C.M. 1921; re-en. Sec. 5075, R.C.M. 1935; Sec. 11-1207, R.C.M. 1947; R.C.M. 1947, 11-1206, 11-1207; amd. Sec. 9, Ch. 311, L. 1979.

7-5-4322. Election on question of granting franchise. (1) Notice of the election shall be published as provided in 13-1-108. The notice must state the time and place of holding the election, the character of any such franchise applied for, and the valuable consideration, if there is any, to be derived by the city.

(2) At such election the ballots must contain the words "For granting franchise" and "Against granting franchise", and in voting, the elector must make a cross (X) opposite the answer he intends to vote for. The election must be conducted and canvassed and the return made in the same manner as other city or town elections.

(3) If the majority of the votes cast at the election are "For granting franchise", the mayor and city council must thereupon grant the same by the passage and approval of a proper ordinance.

History: (1), (2)En. Sec. 2, Ch. 85, L. 1903; re-en. Sec. 3292, Rev. C. 1907; re-en. Sec. 5076, R.C.M. 1921; re-en. Sec. 5076, R.C.M. 1935; Sec. 11-1208, R.C.M. 1947; (3)En. Sec. 3, Ch. 85, L. 1903; re-en. Sec. 3293, Rev. C. 1907; re-en. Sec. 5077, R.C.M. 1921; re-en. Sec. 5077, R.C.M. 1935; Sec. 11-1209, R.C.M. 1947; R.C.M. 1947, 11-1208, 11-1209; amd. Sec. 304, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

Part 44

Municipal Elections

7-5-4401. Division of municipalities into wards. (1) The first city or town council elected under the provisions of this title must divide the city or town into wards for election and other purposes, having regard to population so as to make them as nearly equal as possible.

(2) (a) Cities of the first class must be divided into not less than four or more than 10 wards.

(b) Cities of the second class must be divided into not less than three or more than six wards.

(c) Cities of the third class must be divided into not less than two or more than four wards.

(d) Towns must be divided into not less than two or more than three wards; provided, however, that the town council may by ordinance reduce the number of wards in a town to only one if it so desires.

(3) All changes in the number and boundaries of wards must be made by ordinance. No new ward must be created unless there shall be within its boundaries 150 or more electors.

History: (1)En. Sec. 4746, Pol. C. 1895; re-en. Sec. 3222, Rev. C. 1907; re-en. Sec. 5001, R.C.M. 1921; re-en. Sec. 5001, R.C.M. 1935; Sec. 11-707, R.C.M. 1947; (2), (3)En. Sec. 4747, Pol C. 1895; re-en. Sec. 3223, Rev. C. 1907; amd. Sec. 1, Ch. 74, L. 1909; re-en. Sec. 5002, R.C.M. 1921; re-en. Sec. 5002, R.C.M. 1935; amd. Sec. 1, Ch. 39, L. 1943; Sec. 11-708, R.C.M. 1947; R.C.M. 1947, 11-707, 11-708.

7-5-4402 through 7-5-4409. Repealed. Sec. 407, Ch. 571, L. 1979.

CHAPTER 6

FINANCIAL ADMINISTRATION AND TAXATION

Part 1 — In-Lieu Payments for Taxes

Section

7-6-101. Definitions.
7-6-102. Authorization to request in-lieu payments for taxes from United States.
7-6-103. Computation of payment in lieu of taxes.
7-6-104. Procedure to file agreement and collect in-lieu payments.
7-6-105. Establishment and use of government project fund.
7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments.
7-6-107. Procedure for subdivisions other than county to deal directly with United States.
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7-6-2102. Limitation on number of deputy county treasurers.
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7-6-2115. Manner of settling accounts.
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7-6-2301. Construction of part.
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7-6-2407. Auditing and investigation of claims.
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7-6-2421. Presentation of claims against county.
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7-6-2502. Responsibility of county commissioners to fix tax rate and levy tax.
7-6-2503. Duties of county treasurer related to taxation.
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7-6-2511. County levy for district court expenses.
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7-6-2531. County may exceed maximum mill levy — election required.
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Part 42 — Municipal Budget Law

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7-6-4251. Procedure to make expenditures and incur liabilities in case of serious emergencies.
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Part 44 — Municipal Taxation

7-6-4401. General taxing power of municipalities.
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Sections 7-6-4424 through 7-6-4430 reserved.
7-6-4431. Authorization to exceed maximum mill levy — election required.
7-6-4432. Purpose of additional mill levy to be stated.
7-6-4433. Repealed. Sec. 42, Ch. 252, L. 1979; Sec. 407, Ch. 571, L. 1979; Sec. 8, Ch. 614, L. 1979.
7-6-4434. Notice of election on question of additional mill levy.
7-6-4435. Repealed. Sec. 407, Ch. 571, L. 1979.
7-6-4436. Conduct of election.
7-6-4437. Use of proceeds from additional mill levy.
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7-6-4439. Emergency provisions not affected.
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7-6-4453. Certain special mill levies also available.

7-6-4454. Certification of all-purpose levy to county officers.
7-6-4455. Changes from all-purpose levy method.

Part 45 — Municipal Warrants

7-6-4501. Interest on unpaid warrants.
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7-6-4601. Deposit of public money.
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7-6-4603. Investment of municipal money in city or town warrants.

Part 1

In-Lieu Payments for Taxes

7-6-101. Definitions. The following definitions shall be applied to the terms used in this part:

(1) "Agreement" shall mean contract and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Fund" shall mean, unless otherwise expressed, the government project fund to be established pursuant to 7-6-105.

(4) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate or otherwise are vested.

(5) "Political subdivision" shall mean any agency or unit of this state which now is or hereafter shall be authorized to levy taxes or empowered to cause taxes to be levied.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation, or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying, or using any lands so owned or acquired by the United States.

(7) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(8) "United States" shall mean the United States of America.

History: En. Sec. 1, Ch. 59, L. 1939; amd. Sec. 1, Ch. 139, L. 1941; R.C.M. 1947, 84-5506.

7-6-102. Authorization to request in-lieu payments for taxes from United States. (1) The board of county commissioners of any county in this state is hereby authorized and empowered:

(a) to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay; and

(b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

(2) Each agreement entered into pursuant to subsection (1) shall contain the names of the political subdivisions with respect to which it is consummated and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: (1)En. Sec. 2, Ch. 59, L. 1939; Sec. 84-5507, R.C.M. 1947 (2)En. Sec. 4, Ch. 59, L. 1939; Sec. 84-5509, R.C.M. 1947; R.C.M. 1947, 84-5507, 84-5509.

7-6-103. Computation of payment in lieu of taxes. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: En. Sec. 3, Ch. 59, L. 1939; R.C.M. 1947, 84-5508.

7-6-104. Procedure to file agreement and collect in-lieu payments. (1) The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer.

(2) Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated and state the share of the payment due thereunder to which the subdivision is entitled.

(3) On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939; R.C.M. 1947, 84-5510.

7-6-105. Establishment and use of government project fund. (1) The county treasurer shall establish a fund in the county treasury to be known as the government project fund.

(2) The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever such payment is received, the county treasurer shall apportion it to the several accounts in the fund, pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939; R.C.M. 1947, 84-5511.

7-6-106. Political subdivisions to receive county warrants for share of in-lieu payments. (1) After apportioning any payment to the several accounts as provided in 7-6-105, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners and the other of which shall be filed with the county clerk.

(2) The board shall, by appropriate resolution, order warrants drawn on the county treasury to the order of each political subdivision named in the itemized statement and in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign the warrants, which shall also be signed by the chairman of the board.

(3) (a) Except as provided in subsection (3)(b), whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same.

(b) The county treasurer may not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of the political subdivision. The endorsement of any warrant by the presiding officer of the governing body of a political subdivision as provided in this section constitutes an approval of the agreement under which the payment was received. If any governing body of a political subdivision refuses to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county.

History: **En. Sec. 7, Ch. 59, L. 1939; R.C.M. 1947, 84-5512; amd. Sec. 1, Ch. 252, L. 1979.**

7-6-107. Procedure for subdivisions other than county to deal directly with United States. (1) If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby:

(a) authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay; and

(b) empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes.

(2) The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: **En. Sec. 8, Ch. 59, L. 1939; R.C.M. 1947, 84-5513.**

7-6-108. Disposition of in-lieu payments by subdivisions. All money received by a political subdivision pursuant to 7-6-106 or under 7-6-107 shall be deposited in such fund or funds or items of a fund or funds as may be designated in the agreement. If the agreement does not make such designation, the money received shall be deposited in such fund or funds or items of a fund or funds as the governing body of such subdivision shall by appropriate resolution direct.

History: **En. Sec. 9, Ch. 59, L. 1939; R.C.M. 1947, 84-5514.**

7-6-109. Requirement to provide services in absence of agreement. No provision of this part shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this part, of the duty of furnishing for the benefit of a project all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: En. Sec. 10, Ch. 59, L. 1939; R.C.M. 1947, 84-5515.

Part 2

Deposit and Investment of Public Money

7-6-201. Deposit of public funds in financial institutions. (1) Except as provided in 7-6-202, 7-6-206(3), 7-6-2701, it shall be the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control in any solvent banks, building and loan associations, or savings and loan associations located in the county, city, or town of which such treasurer is an officer, subject to national supervision or state examination as the local governing body may designate, and no other.

(2) Said local governing body is hereby authorized to deposit such public money not necessary for immediate use by such county, city, or town in a savings or time deposit with any bank, building and loan association, or savings and loan association authorized above.

(3) The treasurer or town clerk shall take from such bank, building and loan association, or savings and loan association such security as the local governing body may prescribe, approve, and deem fully sufficient and necessary to insure the safety and prompt payment of all such deposits, together with the interest on any time or savings deposits.

(4) All such deposits shall be subject to withdrawal by the treasurer or town clerk in such amounts as may be necessary from time to time. No deposit of funds shall be made or permitted to remain in any bank, building and loan association, or savings and loan association until the security for such deposits shall have been first approved by the local governing body and delivered to the treasurer or town clerk.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-202. Investment of public money in direct obligations of the United States. Said local governing body is hereby authorized to invest such public money not necessary for immediate use by such county, city, or town in direct obligations of the United States government, payable within not to exceed 180 days from the time of such investment.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1,

Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-203. Interest rates on deposits of public money. (1) The bank, building and loan association, or savings and loan association in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, or savings and loan association to pay said interest rate shall constitute a waiver of that institution's right to participate in the deposit of public funds as set forth in this part.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-204. Crediting of interest. (1) Unless otherwise provided, all interest paid and collected on such deposits or investments shall be credited to the general fund of the county, city, or town to whose credit such funds are deposited.

(2) All interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under [Title 19, chapter 12], must be credited to the account of that fire district or department.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979.

Compiler's Comments

Effective date. Sec. 2, Ch. 486, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

The bracketed reference in subsection (2) to "Title 19, chapter 12" apparently should be a reference to "part 21 or 23 of chapter 33 of Title 7".

7-6-205. Demand deposits. (1) Demand deposits shall be placed only in banks.

(2) When more than one bank is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such demand deposits shall be distributed ratably among all of such banks qualifying therefor and substantially in proportion to paid-in capital and surplus of each such bank willing to receive such demand deposits under the terms of this part. It shall be the duty of said county or city treasurer or town clerk to prorate all such demand deposits among all of the

banks qualified to receive the same as provided in this part, to the end that an equitable distribution of such demand deposits shall be maintained.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a).

7-6-206. Time deposits. (1) Such public money not necessary for immediate use by such county, city, or town which is not invested in direct obligations of the United States government as authorized in 7-6-202 may be placed in time or savings deposits with any bank or savings and loan association in the county, city, or town.

(2) When more than one bank or savings and loan association is available in any county for the deposit of such county funds or in any city or town for the deposit of such city or town funds, such funds may be distributed ratably among all of such banks and savings and loan associations qualifying therefor and substantially in proportion to the total property taxes paid during the preceding year in such county or the county in which such city or town is located and the corporation license taxes paid by each bank or savings and loan association willing to receive such time or savings deposits under the terms of this part.

(3) In lieu of a ratable distribution among banks and savings and loan associations within the county, city, or town, the local governing body may solicit bids without advertising from any bank or savings and loan association in a county having at least two such financial institutions. Such institutions may request in writing that they be listed for solicitation on bids for public money not necessary for immediate use by the unit of local government. In counties having less than two such institutions, the local governing body may solicit bids from and deposit public money in such institutions in neighboring counties unless the local financial institution agrees to pay the same rate of interest bid by the neighboring financial institutions. The governing body may solicit bids by notice sent by mail to the investment institutions whose names are listed as provided herein. The provisions of this subsection shall be considered as meeting the requirements of subsection (2).

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979.

7-6-207. Deposit security. (1) The local governing body may require security only for that portion of the deposits which is not guaranteed or insured according to law and, as to such unguaranteed or uninsured portion, only to the extent of 50% of such deposits. The security shall consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, such securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when such receipt is in favor of the treasurer or town clerk, his successors, and the state of Montana and the form of receipt and the trustee have been approved by the department of community affairs. All warrants or other negotiable securities must be properly assigned or endorsed in blank. It is the duty of the appropriate governing body, upon the acceptance and approval of any of the above-mentioned bonds or securities, to make a complete minute entry of the acceptance and approval upon the record of their proceedings, and the bonds and securities shall be reapproved at least quarter-annually thereafter.

History: (1), (2)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; Sec. 16-2618, R.C.M. 1947; (3)(a)En. Sec. 1, Ch. 106, L. 1935; re-en. Sec. 4767.1, R.C.M. 1935; Sec. 16-2619, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 106, L. 1935; re-en. Sec. 4767.2, R.C.M. 1935; Sec. 16-2620, R.C.M. 1947; R.C.M. 1947, 16-2618(2), (3), 16-2619, 16-2620; amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979.

7-6-208. Substitution of deposit security. (1) Any bank, building and loan association, or savings and loan association pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, or savings and loan association. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, or savings and loan association.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7).

7-6-209. Director of department of community affairs to sign trustee and deposit receipts. The director of the department of community affairs shall sign all trustee and deposit receipts and releases required to be signed on behalf of the state in all cases where negotiable securities are placed in trust with a trustee, in place of the actual securities, for security of county, city, and town deposits under the laws of the state relating to the deposit of county, city, and town funds.

History: En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621.

7-6-210. Supervisory role of department of community affairs. Whenever it shall come to the attention of the department of community affairs that the funds of any county, city, or town are not properly deposited as provided in this part, the department shall order the treasurer of such county or city or the town clerk to deposit said funds in accordance therewith, and if such treasurer or town clerk shall refuse or neglect to comply with such order, it shall be the duty of the department to institute proceedings against such treasurer or town clerk, at the cost of the county, city, or town of which such treasurer or town clerk is an officer, on the official bond of such treasurer or town clerk.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-211. Report by financial institution. Any bank, building and loan association, or savings and loan association receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, or savings and loan association during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, or savings and loan association; and

(4) that neither such bank, building and loan association, or savings and loan association nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, or savings and loan association.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

7-6-212. Limitation on liability of treasurer or town clerk. Where money shall have been deposited in accordance with the provisions of this part, the treasurer or town clerk shall not be liable for loss on account of any such deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct.

History: En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part).

Parts 3 through 20 reserved

Part 21

Office of County Treasurer

7-6-2101. Procedure if county treasurer dies in office. (1) In case of the death of any county treasurer, his legal representatives must deliver up all official money, books, accounts, papers, and documents which come into their possession.

(2) No percentage must be allowed to the treasurer on any money received by him from the legal representative of such predecessor.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

7-6-2102. Limitation on number of deputy county treasurers. (1) Except as provided in subsection (2), the whole number of deputies allowed the county treasurer must not exceed:

(a) two in counties of the first class;

(b) one in counties of all other classes.

(2) The board of county commissioners may allow such additional deputies as may be necessary during the months of November and December of each year.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

7-6-2103. Suspension of county treasurer in case of misconduct. Whenever any action based upon official misconduct is commenced against any county treasurer, the board of county commissioners may in its discretion suspend him from office until such suit is determined and may appoint some person to fill the vacancy.

History: En. Sec. 4368, Pol. C. 1895; re-en. Sec. 3004, Rev. C. 1907; re-en. Sec. 4768, R.C.M. 1921; Cal. Pol. C. Sec. 4162; re-en. Sec. 4768, R.C.M. 1935; R.C.M. 1947, 16-2622.

7-6-2104 through 7-6-2110 reserved.

7-6-2111. Duties of county treasurer. The county treasurer must:

(1) receive all money belonging to the county and all other money directed to be paid to him by law, safely keep the same, and apply and pay them out, rendering account thereof as required by law;

(2) keep an account of the receipt and expenditures of all such money in books provided for the purpose, in which must be entered:

(a) the amount, the time when, from whom, and on what account all money was received by him;

(b) the amount, time when, to whom, and on what account all disbursements were made by him;

(3) so keep his books that the amounts received and paid out on account of separate funds or specific appropriations are exhibited in separate and distinct accounts, with the whole receipts and expenditures shown in one general or cash account;

(4) enter no money received for the current year on his account with the county for the past fiscal year until after his annual settlement for the past year has been made with the county clerk;

(5) disburse the county money only on county warrants issued by the county clerk, based on orders of the board of county commissioners, or as otherwise provided by law.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(1) thru (5).

7-6-2112. Treasurer's reports to county commissioners. (1) Each county treasurer must make a detailed monthly report to the board of county commissioners of his county, of all money received by him and the disbursement thereof and of all debts due to and from the county and of all other proceedings in his office, so that the receipts into the treasury and the amount of disbursements, together with the debts due to and from the county, appear clearly and distinctly.

(2) On the first Monday of January, April, July, and October of each year the county treasurer must settle with the board of county commissioners for all money collected, and on those days the treasurer must deliver to the board affidavits verifying the reconcilement of the balance on hand in the county treasury. After the approval of the statements and the accompanying affidavits, one copy of the quarterly report shall be filed with the county clerk of the county and one copy shall be retained by the county treasurer.

History: En. Sec. 4361, Pol. C. 1895; re-en. Sec. 2997, Rev. C. 1907; re-en. Sec. 4761, R.C.M. 1921; Cal. Pol. C. Sec. 4155; re-en. Sec. 4761, R.C.M. 1935; amd. Sec. 1, Ch. 75, L. 1941; R.C.M. 1947, 16-2612; amd. Sec. 3, Ch. 252, L. 1979.

7-6-2113. Effect of failure to make treasurer's report. If any county treasurer neglects or refuses to settle or report as required in 7-6-2112, he forfeits and must pay to the county the sum of $500 for every such neglect or refusal. The board of county commissioners must institute suits for the recovery thereof.

History: En. Sec. 4362, Pol. C. 1895; re-en. Sec. 2998, Rev. C. 1907; re-en. Sec. 4762, R.C.M. 1921; Cal. Pol. C. Sec. 4156; re-en. Sec. 4762, R.C.M. 1935; R.C.M. 1947, 16-2613.

7-6-2114. Inspection of treasurer's books and records. (1) The books, accounts, and vouchers of the treasurer are at all times subject to the inspection and examination of the board of county commissioners and the grand jury.

(2) The treasurer must permit the department of community affairs and county clerk or the board of county commissioners to examine his books and

count the money in the treasury when any of them wants to make an examination or counting.

History: (1)En. Sec. 4370, Pol. C. 1895; re-en. Sec. 3006, Rev. C. 1907; re-en. Sec. 4770, R.C.M. 1921; Cal. Pol. C. Sec. 4164; re-en. Sec. 4770, R.C.M. 1935; Sec. 16-2624, R.C.M. 1947; (2)En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; Sec. 16-2625, R.C.M. 1947; R.C.M. 1947, 16-2624, 16-2625(1).

7-6-2115. Manner of settling accounts. (1) The treasurer must settle his accounts relating to the collection, care, and disbursement of public revenue of whatsoever nature and kind with the county clerk on the first Monday of each month. For the purpose of making such settlements, he must make out a statement, under oath, of the amount of money or other property received prior to the period of such settlement, the sources whence the same was derived, the amount of payments or disbursements and to whom, with the amount remaining on hand. He must, in such settlements, deposit all warrants redeemed by him and take the county clerk's receipt therefor.

(2) He must make a full settlement of all accounts with the county clerk, annually on the first Monday of January and in the presence of the county commissioners, who have control thereof.

History: En. Sec. 4360, Pol. C. 1895; re-en. Sec. 2996, Rev. C. 1907; re-en. Sec. 4760, R.C.M. 1921; Cal. Pol. C. Sec. 4154; re-en. Sec. 4760, R.C.M. 1935; R.C.M. 1947, 16-2611.

7-6-2116. Receipt for money paid to county treasurer. When any money is paid to the county treasurer, he must issue a receipt, in triplicate, for such money, the original of which shall be delivered to the person paying the same, the duplicate of which shall be delivered to the county clerk, and the triplicate shall be retained in his office.

History: En. Sec. 4351, Pol. C. 1895; re-en. Sec. 2987, Rev. C. 1907; re-en. Sec. 4751, R.C.M. 1921; Cal. Pol. C. Sec. 4146; amd. Sec. 1, Ch. 92, L. 1923; re-en. Sec. 4751, R.C.M. 1935; R.C.M. 1947, 16-2602.

7-6-2117. Receipt of money from county attorney. (1) The county attorney must, on the first Monday of January, April, July, and October in each year file with the county clerk an account, verified by his oath, of all money received by him in his official capacity during the preceding 3 months and at the same time pay it over to the county treasurer.

(2) If the county attorney refuses or neglects to account for and pay over money received by him as required by subsection (1), the county treasurer must bring an action against him for the recovery thereof in the name of the county and may recover in such action, in addition to the amount so received, 50% thereon by way of damages.

History: (1)En. Sec. 4450, Pol. C. 1895; amd. Sec. 1, p. 76, L. 1899; re-en. Sec. 3052, Rev. C. 1907; re-en. Sec. 4819, R.C.M. 1921; Cal. Pol. C. Sec. 4256; amd. Sec. 1, Ch. 187, L. 1935; re-en. Sec. 4819, R.C.M. 1935; amd. Sec. 1, Ch. 17, L. 1965; Sec. 16-3101, R.C.M. 1947; (2)En. Sec. 4363, Pol. C. 1895; re-en. Sec. 2999, Rev. C. 1907; re-en. Sec. 4763, R.C.M. 1921; Cal. Pol. C. Sec. 4157; re-en. Sec. 4763, R.C.M. 1935; Sec. 16-2614, R.C.M. 1947; R.C.M. 1947, 16-2614, 16-3101(5).

7-6-2118. Receipt of money from predecessor county treasurer. No percentage must be allowed to the treasurer on any money received by him from his predecessor in office.

History: En. Sec. 4369, Pol. C. 1895; re-en. Sec. 3005, Rev. C. 1907; re-en. Sec. 4769, R.C.M. 1921; Cal. Pol. C. Sec. 4163; re-en. Sec. 4769, R.C.M. 1935; R.C.M. 1947, 16-2623(part).

7-6-2119 through 7-6-2130 reserved.

7-6-2131. Fees of county treasurer. The county treasurer shall receive the sum of $3 for making and acknowledging a deed for property sold for delinquent taxes.

History: En. Sec. 1, p. 49, L. 1899; re-en. Sec. 3171, Rev. C. 1907; re-en. Sec. 4920, R.C.M. 1921; re-en. Sec. 4920, R.C.M. 1935; R.C.M. 1947, 25-234.

Part 22

General Provisions Related to Counties

7-6-2201. Fiscal year for counties. The fiscal year for county purposes commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 3821, Pol. C. 1895; re-en. Sec. 2594, Rev. C. 1907; amd. Sec. 1, Ch. 73, L. 1921; re-en. Sec. 518, R.C.M. 1921; re-en. Sec. 518, R.C.M. 1935; amd. Sec. 1, Ch. 121, L. 1953; amd. Sec. 1, Ch. 84, L. 1955; amd. Sec. 2, Ch. 127, L. 1961; amd. Sec. 1, Ch. 175, L. 1969; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 59-701(part); amd. Sec. 4, Ch. 252, L. 1979.

7-6-2202. Duties of county clerk related to finance. (1) The county clerk must draw warrants on the county treasury in favor of all persons entitled thereto in payment:

(a) of all claims and demands chargeable against the county which have been legally examined, allowed, and ordered paid by the board of county commissioners;

(b) for all debts and demands against the county when the amounts are fixed by law and are not directed to be audited by some other person or tribunal.

(2) The county clerk must keep accounts current with the treasurer. When any person deposits with the county treasurer any money paid into the treasury, the county clerk shall be furnished by the treasurer with a duplicate of the receipt issued to the person, which duplicate receipt shall be filed in the office of the county clerk, and the county clerk shall charge the treasurer with the amount thereof.

(3) The county clerk must make the annual statement as prescribed in 7-6-2203.

History: En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; R.C.M. 1947, 16-2917(part); amd. Sec. 5, Ch. 252, L. 1979.

7-6-2203. Annual financial statement. (1) Within 40 days after the close of each fiscal year, the county clerk shall make out and present to the board of county commissioners and the department of community affairs a complete statement of the financial condition of the county. The statement must show:

(a) a detailed description of all of the resources and liabilities of the county and the book value of them;

(b) the amount of money received, showing the source of that revenue;

(c) the amount of money disbursed, with the purpose of disbursement;

(d) the operation of each of the cash and warrant accounts, showing the balance at the beginning of the year, the credits, the debits, and the balance at the end of the year;

(e) the assessed valuation of the real and personal property of the county;

(f) the rate of taxation and the amount of taxes delinquent for the preceding years; and

(g) such other items as the department of community affairs may prescribe.

(2) The statement shall be made out on the form designated by the department.

History: En. Sec. 778, 5th Div. Comp. Stat. 1887; amd. Sec. 4294, Pol. C. 1895; re-en. Sec. 2953, Rev. C. 1907; re-en. Sec. 4814, R.C.M. 1921; amd. Sec. 1, Ch. 2, L. 1925; amd. Sec. 1, Ch. 106, L. 1927; re-en. Sec. 4814, R.C.M. 1935; amd. Sec. 72, Ch. 348, L. 1974; amd. Sec. 31, Ch. 213, L. 1975; R.C.M. 1947, 16-2924.

7-6-2204. Cash verification by county clerk. The county clerk and recorder, at the close of business each month, shall count the cash in the office of the county treasurer and shall retain a copy of the counting in his office.

History: En. Sec. 4371, Pol. C. 1895; re-en. Sec. 3007, Rev. C. 1907; re-en. Sec. 4771, R.C.M. 1921; Cal. Pol. C. Sec. 4165; amd. Sec. 1, Ch. 124, L. 1935; re-en. Sec. 4771, R.C.M. 1935; amd. Sec. 71, Ch. 348, L. 1974; amd. Sec. 1, Ch. 61, L. 1975; amd. Sec. 30, Ch. 213, L. 1975; R.C.M. 1947, 16-2625(2).

7-6-2205 through 7-6-2210 reserved.

7-6-2211. Authorization to conduct county business on a cash basis. (1) In case the total indebtedness of a county, lawful when incurred, exceeds the limit of 18% established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) Nothing in this section restricts the right of the board to make the necessary tax levies for interest and sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given him by law to obtain payment of his claim.

History: En. Sec. 1, Ch. 93, L. 1935; re-en. Sec. 4447.1, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1973; amd. Sec. 36, Ch. 566, L. 1977; R.C.M. 1947, 16-808.

7-6-2212. Authorization to maintain petty cash fund. (1) The board of county commissioners, with the approval of the department of community affairs, may set aside a sum of not less than $100 or more than $1,000 out of the general fund, which shall be known as a petty cash fund, for the purpose of paying incidental expenses such as freight, express, postage, and other similar items which must be paid in cash at time of delivery.

(2) (a) In counties having a county auditor, the county auditor is responsible for expenditures from the petty cash fund.

(b) In counties not having a county auditor, the county clerk is responsible for expenditures from the petty cash fund.

History: En. Sec. 4257, Pol. C. 1895; re-en. Sec. 2922, Rev. C. 1907; re-en. Sec. 4632, R.C.M. 1921; amd. Sec. 1, Ch. 141, L. 1925; re-en. Sec. 4632, R.C.M. 1935; amd. Sec. 69, Ch. 348, L. 1974; amd. Sec. 27, Ch. 213, L. 1975; R.C.M. 1947, 16-2049.

7-6-2213. Report of fees received and money disbursed. It is the duty of all county officers, justices of the peace, and constables to make report in writing, under oath, to the board of county commissioners on the first Monday of March, June, September, and December, showing in detail all fees, emoluments, and compensation received and money disbursed by them in their official capacity during the quarter preceding the making of each report.

History: En. Sec. 4336, Pol. C. 1895; re-en. Sec. 2981, Rev. C. 1907; re-en. Sec. 4745, R.C.M. 1921; re-en. Sec. 4745, R.C.M. 1935; R.C.M. 1947, 16-2423.

7-6-2214. Examination of report. (1) It is the duty of the board to examine the reports.

(2) (a) If the report of an officer is found correct, the chairman of the board must write on the back of the same the words "Approved and ordered filed" and sign his name thereto.

(b) If any report is found not correct, it must be returned to the officer with a statement of its insufficiency, and the report must be corrected and returned to the board and then, if found correct, filed as aforesaid.

History: En. Sec. 4337, Pol. C. 1895; re-en. Sec. 2982, Rev. C. 1907; re-en. Sec. 4746, R.C.M. 1921; re-en. Sec. 4746, R.C.M. 1935; R.C.M. 1947, 16-2424.

7-6-2215. Repealed. Sec. 1, Ch. 135, L. 1979.

7-6-2216. Repealed. Sec. 1, Ch. 135, L. 1979.

7-6-2217. Administration of relief received from federal agencies. In any county where aid is received from the reconstruction finance corporation or any other similar agencies, the county commissioners of such county shall be authorized to employ the necessary help and incur such expenses as are necessary in the administration of such relief; and in so doing the board may appropriate such funds as are necessary from the general fund of said county. Such appropriation shall be held and deemed legal and valid notwithstanding the provisions of the budget act.

History: En. Sec. 1, Ch. 44, L. 1933; re-en. Sec. 4520.1, R.C.M. 1935; R.C.M. 1947, 16-1162.

7-6-2218. Appropriation of state and federal money by county. (1) The board of county commissioners of any county in Montana shall have the power and authority to appropriate, by formal resolution, money received from the federal or state government, regardless of the time the money is received. The expenditure of said funds shall be according to federal requirements specified in the federal act or state requirements specified in the state legislation. The money appropriated under this section may include federal revenue sharing funds granted to Montana conservation districts organized under Title 76, chapter 15.

(2) The resolution shall state the source of the money, the expenditure program for the funds, and the effective date of the appropriation.

History: En. 16-1185 by Sec. 1, Ch. 70, L. 1974; amd. Sec. 1, Ch. 75, L. 1975; R.C.M. 1947, 16-1185.

7-6-2219. Authorization to establish capital improvement fund. The governing body of any county in Montana may establish a capital improvement fund for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided a capital improvement program has been formally adopted by said governing body.

History: En. 16-1186 by Sec. 1, Ch. 54, L. 1975; R.C.M. 1947, 16-1186.

7-6-2220. Levy for capital improvement fund. Money for the capital improvement fund is to be derived from the multiple levies authorized by statute and appropriated to the capital improvement fund. However, no more than 10% of the money derived from any one levy may be appropriated to the capital improvement fund.

History: En. 16-1187 by Sec. 2, Ch. 54, L. 1975; R.C.M. 1947, 16-1187.

7-6-2221. Limitations on capital improvement fund. The capital improvement fund may not exceed at any time a competent engineering estimate of the cost of the adopted capital improvement program. Money deposited in the fund must be expended within a 10-year period.

History: En. 16-1188 by Sec. 3, Ch. 54, L. 1975; R.C.M. 1947, 16-1188; amd. Sec. 6, Ch. 252, L. 1979.

Part 23

County Budget Law

7-6-2301. Construction of part. This part, except 7-6-2351 and 7-6-2352, shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation now prescribed by existing law or acts amendatory thereof.

History: En. Sec. 9, Ch. 148, L. 1929; re-en. Sec. 4613.9, R.C.M. 1935; R.C.M. 1947, 16-1910.

7-6-2302. Role of department of community affairs. The department of community affairs shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part, except 7-6-2351 and 7-6-2352, to define what expenditures are chargeable to each budget account, and to establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 8, Ch. 148, L. 1929; re-en. Sec. 4613.8, R.C.M. 1935; amd. Sec. 67, Ch. 348, L. 1974; amd. Sec. 26, Ch. 213, L. 1975; R.C.M. 1947, 16-1909; amd. Sec. 7, Ch. 252, L. 1979.

7-6-2303. Violations. Any person violating any of the provisions of this part, except 7-6-2351 and 7-6-2352, shall be guilty of a misdemeanor.

History: En. Sec. 10, Ch. 148, L. 1929; re-en. Sec. 4613.10, R.C.M. 1935; R.C.M. 1947, 16-1911.

7-6-2304 through 7-6-2310 reserved.

7-6-2311. Filing of estimate of revenues and expenses with county clerk. (1) Before June 1 each year the county clerk and recorder shall notify in writing each county official in charge of an office, department, service, institution, or county-funded district court program of the county to file with the county clerk and recorder, before June 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the next fiscal year.

(2) (a) The county commissioners shall submit to the county clerk and recorder the estimate of expenditures for all purposes for the board and a detailed statement showing all new road and bridge construction to be financed from county road and bridge funds, from any special road or bridge fund, from any special highway fund, and from bond issues issued or authorized for the next fiscal year, together with the cost of that construction as computed by the county surveyor or, if for construction in charge of a special engineer, then by that engineer. The county commissioners shall also submit to the county clerk and recorder detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be approved at an election to be held.

(b) The county surveyor and any special engineer shall prepare the estimates of cost of road and bridge construction for the county commissioners. They shall also submit a similar statement showing road and bridge maintenance expenditures as nearly as can be estimated.

(c) The county treasurer shall prepare the estimates for interest and debt reduction.

(d) The county clerk and recorder shall prepare all other estimates which properly fall within the duties of his office.

(3) The estimates required in this section shall be submitted on forms provided by the county clerk and recorder and prescribed by the department of community affairs. The forms may only be varied or departed from with permission and approval of that department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required by this section or 7-6-2312 devolve upon the official or employee in charge of the office, department, service, or institution.

History: **En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part); amd. Sec. 1, Ch. 405, L. 1979.**

7-6-2312. Penalty for noncompliance with filing requirements. (1) The county clerk shall withhold as a penalty from the salary of each official failing or refusing to file the estimates, $10 for each day of delay. The total penalty against any official may not exceed $50 in 1 year.

(2) The notice provided for in 7-6-2311 shall contain a copy of this penalty clause.

History: **En. Sec. 1, Ch. 148, L. 1929; re-en. Sec. 4613.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1947; amd. Sec. 63, Ch. 348, L. 1974; amd. Sec. 22, Ch. 213, L. 1975; R.C.M. 1947, 16-1901(part).**

7-6-2313. Preparation of expenditure program and information on sources of revenue. (1) From those estimates the county clerk and recorder shall prepare a tabulation showing the complete expenditure program of the county for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, institution, or district court program funded by the county for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(1), (4); amd. Sec. 2, Ch. 405, L. 1979.

7-6-2314. Classification of estimates, appropriations, and expenditures. (1) In the tabulation required by 7-6-2313, the estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(2) (a) Within the general class of salaries and wages, each salary shall be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in any office where the services of such special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth.

(b) Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of community affairs.

(c) Expenditures for capital outlay shall set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or which cannot properly be assigned to any of the general classes shall be set forth and itemized in detail.

History: En. Sec. 2, Ch. 148, L. 1929; re-en. Sec. 4613.2, R.C.M. 1935; amd. Sec. 64, Ch. 348, L. 1974; amd. Sec. 23, Ch. 213, L. 1975; R.C.M. 1947, 16-1902(2), (3).

7-6-2315. Consideration of tabulation by county commissioners — preparation of preliminary budget. (1) The tabulation shall be submitted to the county commissioners by the county clerk and recorder on or before the first Monday of July.

(2) Upon receipt thereof, the board of county commissioners shall immediately consider the budget in detail and shall, on or before the second Monday of July, make any revisions, reductions, additions, or changes that they consider advisable. The tabulation, with any revisions, reductions, additions, or changes, is the preliminary budget for the fiscal year which it is intended to cover.

(3) Upon completion of the budget, the county clerk shall immediately transmit one copy of it to the department of community affairs and one copy to the department of revenue.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part).

7-6-2316. Notice of hearing on preliminary budget. (1) The board of county commissioners shall then have a notice published stating that:

(a) the board has completed its preliminary county budget for the current fiscal year;

(b) the budget is open to inspection in the office of the county clerk and recorder;

(c) the board will meet on the Wednesday before the second Monday in August to fix the final budget and make appropriations, stating the time and place of the meeting; and

(d) any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in a newspaper of general circulation in the county.

History: En. Sec. 3, Ch. 148, L. 1929; re-en. Sec. 4613.3, R.C.M. 1935; amd. Sec. 2, Ch. 48, L. 1947; amd. Sec. 65, Ch. 348, L. 1974; amd. Sec. 24, Ch. 213, L. 1975; R.C.M. 1947, 16-1903(part); amd. Sec. 8, Ch. 252, L. 1979.

7-6-2317. Hearing on preliminary budget. (1) On the Wednesday before the second Monday in August, the county commissioners shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The hearing shall be continued from day to day and shall be concluded and the budget approved and adopted on the second Monday in August, before the fixing of the tax levies by the board.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(1); amd. Sec. 9, Ch. 252, L. 1979.

7-6-2318. Determination of projected fund cash flow following hearing. (1) Upon the conclusion of the hearing, the board shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the board may not include any amount which it is anticipated may be received during the fiscal year from the payment of taxes which became delinquent during a preceding fiscal year.

(2) The board shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund or funds against which warrants are to be drawn and issued for each item in the budget and shall specify the fund or funds against which warrants are to be drawn for the expenditures authorized. There may not be added to the amount to be appropriated and authorized to be spent for an item or to the total amount appropriated and authorized to be spent from any fund any amount or percentage because of anticipated loss of revenue by reason of the nonpayment of taxes levied for that fiscal year. The total expenditures authorized to be made from any fund, including the reserve added to them, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(2).

7-6-2319. Determination of fund requirements to be met by tax levy. (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at the close of the preceding fiscal year and the amount of the estimated revenues to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for the fund by tax levy during the current fiscal year.

(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount which may be so added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(3).

7-6-2320. Final budget — approval and adoption. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation or expenditure is authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in the fund at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The board shall then by resolution approve and adopt the budget as finally determined and enter the budget at length in the official minutes of the board.

History: **En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(5).**

7-6-2321. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund. Each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, as being the amount to be raised by tax levy.

(2) The tax levy shall be made in the manner provided by 15-10-201.

History: **En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(6).**

7-6-2322. Budget and tax levies to be supplied to department of community affairs. (1) The county clerk and recorder shall, not later than September 15, forward a full and detailed copy of the final budget, together with the tax levies, to the department of community affairs.

(2) If a county clerk and recorder fails to forward a copy of the budget to the department within that time, that department shall, before October 1, notify the board of county commissioners of the county that a copy of the budget has not been forwarded by the county clerk and recorder. The board must then withhold the county clerk and recorder's salary for September until the county clerk and recorder files with the board a receipt from the department showing the receipt of a copy.

History: **En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(7).**

7-6-2323. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The board of county commissioners shall not approve any claim and the county clerk and recorder shall not issue any warrant for any expenditure in excess of said detailed budget appropriations, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as hereinafter provided. Any county commissioner or commissioners or county clerk and recorder approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the county fourfold the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such county commissioner or commissioners or county clerk and recorder or all of them and their several sureties on their official bonds. It shall be the duty of the county attorney of such county to bring an action therefor in the name of the county.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2324. Limitations on appropriations after budget adopted. (1) The estimates of expenditures, itemized and classified as required in 7-6-2313 and 7-6-2314 and as finally fixed and adopted by said board of county commissioners shall constitute the appropriations for the county for the fiscal year intended to be covered thereby.

(2) Except as provided in 3-5-404, 7-6-2325, and 7-31-2101, the county commissioners and every other county official, including judges of the district court, shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part); amd. Sec. 1, Ch. 275, L. 1979.

7-6-2325. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the board of county commissioners at a regular or special meeting and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided that no salary shall be increased above the amount appropriated therefor.

(2) (a) Except as provided in subsection (2)(b), transfers between the general classes provided in 7-6-2314 shall not be permitted.

(b) In the case of appropriations to be expended from county road or bridge funds, special road district funds, or any special highway fund, any transfer may be made between or among the general classes of:

(i) salaries and wages;
(ii) maintenance and support; and
(iii) capital outlay.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2326. Transfer of cash balance in fund at close of fiscal year. (1) After a public hearing, if the cash balance remaining at the end of a fiscal year in any of the several county funds except the school fund, exceeds the amount to be budgeted to that fund, the excess may be transferred to other funds as the county commissioners consider to be in the best interest of the county.

(2) Notice of the hearing must be given not less than 30 days prior to the hearing by publication in a newspaper of general circulation in the county and by posting in five public places. The notice must state the date, time, and place of the hearing and state generally the purpose and proposed use of the funds.

History: En. Sec. 4, Ch. 148, L. 1929; re-en. Sec. 4613.4, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1937; amd. Sec. 1, Ch. 220, L. 1963; amd. Sec. 1, Ch. 178, L. 1969; amd. Sec. 1, Ch. 5, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 261, L. 1974; amd. Sec. 66, Ch. 348, L. 1974; amd. Sec. 25, Ch. 213, L. 1975; R.C.M. 1947, 16-1904(4).

7-6-2327. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2328. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: En. Sec. 5, Ch. 148, L. 1929; re-en. Sec. 4613.5, R.C.M. 1935; R.C.M. 1947, 16-1906(part).

7-6-2329. Procedure when unpaid and outstanding warrants exist at end of fiscal year. (1) When at the end of any fiscal year any county has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the board of county commissioners must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with the interest thereon.

(2) When at the end of any fiscal year any county has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the board must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by

the board, but must, in any event, be at least 10% of the amount which might be collected by a maximum levy for such fund if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: **En. Sec. 1, Ch. 170, L. 1943; re-en. Sec. 4613.4A, R.C.M. 1935; R.C.M. 1947, 16-1905.**

7-6-2330. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than appropriations for incompleted improvements in progress of construction, shall lapse at the end of the fiscal year.

(2) The appropriation accounts shall remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the ensuing budget.

History: **En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(8).**

7-6-2331. Clerk's report concerning expenditures, liabilities, and appropriations — auditor's report. (1) On the first Monday in each month, the county clerk and recorder shall submit to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

(2) In counties having county auditors, the county auditor, on the last business day of each month, shall furnish the county clerk and recorder with a statement showing the total amount of liabilities incurred against each budget appropriation for which warrants have not been issued up to the close of said business day.

History: **En. Sec. 7, Ch. 148, L. 1929; re-en. Sec. 4613.7, R.C.M. 1935; R.C.M. 1947, 16-1908.**

7-6-2332 through 7-6-2340 reserved.

7-6-2341. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of an emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county; or to meet mandatory expenditures required by law, the county commissioners may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part).

7-6-2342. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-2341 and which could not reasonably have been foreseen at the time of making the budget, the board of county commissioners, by unanimous vote of the members present at any meeting (the time and place of which all the commissioners shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet the emergency.

(2) The board shall publish the resolution, together with a notice that a public hearing will be held on the resolution at the time and place designated in the notice, once in the official newspaper of the county and if there is none, then in a newspaper of general circulation in the county. The hearing may not be less than 1 week after the date of publication.

(3) Any taxpayer or resident of the county may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the commissioners approve the emergency expenditure, they shall make and enter upon their official minutes, by unanimous vote of all of the members of the board present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 10, Ch. 252, L. 1979.

7-6-2343. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-2342(4)(b), any taxpayer or resident of the county feeling aggrieved by the order issued pursuant to 7-6-2342(4) may appeal therefrom to the district court for such county by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the county clerk and recorder of the county as the clerk of the board of county commissioners. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 11, Ch. 252, L. 1979.

7-6-2344. Limitation on amount of emergency expenditures and liabilities — election. (1) Unless the excess above the sums listed in subsections (1)(a), (1)(b), and (1)(c) is first authorized by a majority of the electors of the county, voting at a general or special election, the aggregate total of all expenditures made or liabilities incurred in any fiscal year to meet emergencies, other than those caused by fire, flood, explosion, earthquake, epidemic, riot, or insurrection, may not exceed:

(a) $25,000 in counties of class 1, 2, 3, or 4;

(b) $15,000 in counties of class 5 or 6; and

(c) $7,500 in counties of class 7.

(2) The question of authorizing the excess expenditures shall be submitted in the following form, inserting in the ballot the amount of the excess proposed to be authorized and a description of the emergency to be met:

Shall the board of county commissioners of .... County, Montana, be authorized to make additional expenditures and incur additional liabilities in the amount of $.... over and above the sum of $.... to meet an emergency caused by .....

☐ YES

☐ NO

(3) The total of all emergency budgets and appropriations made therein in any one year to be paid from the county poor fund may not exceed the amount which would be produced by a mill levy equal to the difference between the mills levied in that year and the maximum mill levy authorized by law to be made for such fund, computed against the taxable value of the property subject to such levy as shown by the last completed assessment roll of the county.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(part); amd. Sec. 12, Ch. 252, L. 1979; amd. Sec. 387, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-6-2345. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The county treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other county warrants.

(2) The county clerk and recorder shall include in his annual tabulation to be submitted to the board of county commissioners the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the county commissioners shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The board may submit the question of funding such emergency warrants at any election as provided by law, and if at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 6, Ch. 148, L. 1929; re-en. Sec. 4613.6, R.C.M. 1935; amd. Sec. 2, Ch. 170, L. 1943; amd. Sec. 1, Ch. 159, L. 1953; amd. Sec. 1, Ch. 148, L. 1955; amd. Sec. 1, Ch. 194, L. 1963; R.C.M. 1947, 16-1907(6), (7).

7-6-2346 through 7-6-2350 reserved.

7-6-2351. District court budget. (1) As soon as the preliminary budget provided for in 7-6-2315 has been agreed upon by the governing body, a copy shall be transmitted to the district court. At any time before the final adoption of the budget, the district court may make recommendations for changes in any part of the budget relating to the court considered necessary for the court to discharge its obligations under the law.

(2) No part of the district court fund may be used for any purpose other than the costs and expenses described in 7-6-2511, and no part may be used for the construction or improvement of any county building.

History: En. Sec. 1, Ch. 692, L. 1979.

Compiler's Comments

Commissioner change. The Code Commissioner has rephrased subsection (2) to add a reference to 7-6-2511. The change clarifies the relationship between the two sections, which were enacted in a single section by Ch. 692, L. 1979.

Sunset provision. Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

7-6-2352. State grants to district courts. (1) The department of administration may make grants to the governing body of a county for the district courts for emergency assistance, as provided in this section. The grants are to be made from funds appropriated to the department for that purpose.

(2) The governing body of a county may apply to the department of administration for a grant when the following conditions occur, by filing a written report stating:

(a) that the court will not be able to meet its statutory obligations with the funds authorized under the county budget;

(b) that all lawful sources of income to the district court fund have been exhausted;

(c) that all expenditures from the district court fund have been lawfully made;

(d) that no transfers from the district court fund have been or will be made to any other fund;

(e) that no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351; and

(f) any other information required by the department of administration.

(3) Within 10 days of receipt of the application, the department of administration shall give notice to the district court and the county governing body of its intention to allow the grant.

(4) Within 10 days of receiving notice from the department of administration that a grant will be made, the district court shall adopt an emergency budget and transmit it to the county governing body.

(5) After receiving notice of the county governing body's approval of the emergency budget, the department of administration shall cause a warrant to be issued to the treasurer of the county in which the district court is located for the total amount stated in the approved emergency budget.

(6) The grant received by the county shall be placed in an emergency fund account to be kept separate from the district court fund.

(7) After depleting the district court fund, the county treasurer may make disbursements from the emergency fund account. At the close of its fiscal year, the county treasurer shall return to the department of administration any amounts remaining in the emergency fund account.

History: En. Sec. 2, Ch. 692, L. 1979.

Compiler's Comments

Sunset provision. Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

Part 24

County Auditor and Claims Against County

7-6-2401. Creation of office of county auditor. (1) Except as provided in subsection (2), the office of county auditor exists in all counties of the first, second, third, or fourth class.

(2) The provisions of this part do not apply to counties having a population of less than 15,000 persons according to the most recent federal census.

History: En. Sec. 1, p. 227, L. 1891; re-en. Sec. 4560, Pol. C. 1895; re-en. Sec. 3100, Rev. C. 1907; re-en. Sec. 4824, R.C.M. 1921; amd. Sec. 1, Ch. 117, L. 1923; re-en. Sec. 4824, R.C.M. 1935; amd. Sec. 1, Ch. 52, L. 1961; R.C.M. 1947, 16-3201(part); amd. Sec. 13, Ch. 252, L. 1979.

7-6-2402. Optional election for county auditor. There may be elected in each county of the classes named in 7-6-2401 some person to serve as county auditor.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 14, Ch. 252, L. 1979.

7-6-2403. Qualifications of county auditor. No person is eligible to serve in the office of county auditor of any county who is not of voting age and who has not been a resident of the county for which he is elected or appointed for at least 2 years preceding his election or appointment.

History: En. Sec. 2, p. 227, L. 1891; re-en. Sec. 4561, Pol. C. 1895; re-en. Sec. 3101, Rev. C. 1907; re-en. Sec. 4825, R.C.M. 1921; re-en. Sec. 4825, R.C.M. 1935; amd. Sec. 3, Ch. 423, L. 1971; amd. Sec. 10, Ch. 100, L. 1973; amd. Sec. 1, Ch. 187, L. 1973; R.C.M. 1947, 16-3203(part); amd. Sec. 15, Ch. 252, L. 1979.

7-6-2404. Oath of office. Any person who shall be elected or appointed to the office of county auditor shall, before entering upon the duties of said office, take and subscribe such constitutional oath as is required of other county officers.

History: En. Sec. 3, p. 228, L. 1891; re-en. Sec. 4562, Pol. C. 1895; re-en. Sec. 3102, Rev. C. 1907; re-en. Sec. 4826, R.C.M. 1921; re-en. Sec. 4826, R.C.M. 1935; amd. Sec. 9, Ch. 68, L. 1967; amd. Sec. 3, Ch. 7, L. 1973; R.C.M. 1947, 16-3204.

7-6-2405. Location of office. The county auditor shall keep his principal office at the county seat of the county for which he shall have been elected or appointed.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part).

7-6-2406. Compensation of auditor. The county auditor receives the annual compensation provided by law, payable monthly by warrants drawn on the treasury of the county, and shall receive no other compensation or emolument whatsoever for any service rendered or performed by him, except actual expenses for living and traveling whenever the duties of his office require his presence at any place in the county other than the county seat, and then only after the travel has been ordered and advised by the board of county commissioners.

History: En. Sec. 4, p. 228, L. 1891; re-en. Sec. 4563, Pol. C. 1895; re-en. Sec. 3103, Rev. C. 1907; re-en. Sec. 4827, R.C.M. 1921; re-en. Sec. 4827, R.C.M. 1935; amd. Sec. 1, Ch. 72, L. 1965; R.C.M. 1947, 16-3205(part); amd. Sec. 16, Ch. 252, L. 1979.

7-6-2407. Auditing and investigation of claims. (1) It shall be the duty of persons holding claims against any county having a county auditor to present the same to the county auditor, whose duty it shall be to audit the same. The county auditor shall also investigate and examine all claims presented to him and report the same with his finding to the board of county commissioners at their regular session after such investigation shall have been completed, with his approval or disapproval endorsed thereon, and he shall keep a complete record of all such claims and of his investigations and examinations of the same in a book kept for that purpose.

(2) In all counties having a county auditor:

(a) all bills, claims, accounts, or charges for materials of any kind or nature that may be purchased by and on behalf of the county by any of the county officers or contracted for by the county commissioners shall be investigated, examined, and inspected by the county auditor, who shall endorse his approval or disapproval thereon before any warrant for the payment of the same can be drawn;

(b) no claim against the county shall be paid or warrant drawn therefor unless the same shall have the approval of the county auditor; provided, however, that the judge of the district court of the county where any claim has been disapproved by the county auditor may order the payment of the same.

History: En. Sec. 7, p. 229, L. 1891; re-en. Sec. 4566, Pol. C. 1895; re-en. Sec. 3106, Rev. C. 1907; re-en. Sec. 4830, R.C.M. 1921; re-en. Sec. 4830, R.C.M. 1935; R.C.M. 1947, 16-3208.

7-6-2408. Auditor's powers related to investigations. (1) The county auditors are hereby authorized to administer any oath or affirmation rendered necessary to the performance of the duties of their respective offices.

(2) The county auditors shall have power to issue process and compel the attendance of witnesses before them and examine any matter they may deem necessary. Any witness attending before such auditor shall receive the same fees and mileage as witnesses attending before justices of the peace in trial or examinations in criminal cases.

History: En. Sec. 5, p. 228, L. 1891; re-en. Sec. 4564, Pol. C. 1895; re-en. Sec. 3104, Rev. C. 1907; re-en. Sec. 4828, R.C.M. 1921; re-en. Sec. 4828, R.C.M. 1935; R.C.M. 1947, 16-3206.

7-6-2409. Examination of county books and accounts. (1) It is the duty of the county auditor to examine the books and accounts of the county treasurer, the county clerk and recorder, the sheriff, the clerk of the district court, and all other county and township officers within 15 days prior to the first regular session of the board of county commissioners in March, June, September, and December of each year unless a longer time is granted to the auditor by the board.

(2) The quarterly report shall contain a full and complete statement of the money received and disbursed by each of the officers since the last examination and report. For the purpose of this section, the county auditor has free access to all books and papers in each of the offices.

History: En. Sec. 9, p. 230, L. 1891; re-en. Sec. 4568, Pol. C. 1895; re-en. Sec. 3108, Rev. C. 1907; re-en. Sec. 4832, R.C.M. 1921; re-en. Sec. 4832, R.C.M. 1935; R.C.M. 1947, 16-3210; amd. Sec. 17, Ch. 252, L. 1979.

7-6-2410. Maintenance of records. The county auditor shall carefully preserve all documents, books, records, and other papers required to be kept in his office. Each county auditor, on going out of office, shall deliver over to his successor in office all documents, books, records, and property in his hands belonging to the county.

History: En. Sec. 6, p. 229, L. 1891; re-en. Sec. 4565, Pol. C. 1895; re-en. Sec. 3105, Rev. C. 1907; re-en. Sec. 4829, R.C.M. 1921; re-en. Sec. 4829, R.C.M. 1935; R.C.M. 1947, 16-3207.

7-6-2411. List of claims allowed or rejected. The county clerk and recorder shall return to the county auditor, within 10 days after the adjournment of each session of the board of county commissioners, a list of the claims allowed or rejected, either in whole or in part, by them. This list shall be recorded by the auditor in a book kept for that purpose and carefully preserved in his office.

History: En. Sec. 8, p. 230, L. 1891; re-en. Sec. 4567, Pol. C. 1895; re-en. Sec. 3107, Rev. C. 1907; re-en. Sec. 4831, R.C.M. 1921; re-en. Sec. 4831, R.C.M. 1935; R.C.M. 1947, 16-3209.

7-6-2412. Other duties of auditor. (1) Subject to the requirements of subsection (2), the county auditor shall also perform such other duties, clerical or otherwise, as he may be directed to perform by the county commissioners.

(2) A reasonable amount of time must be allowed the county auditor for the performance of the duties definitely set forth in this part.

History: En. Sec. 11, p. 231, L. 1891; re-en. Sec. 4570, Pol. C. 1895; re-en. Sec. 3110, Rev. C. 1907; re-en. Sec. 4834, R.C.M. 1921; re-en. Sec. 4834, R.C.M. 1935; R.C.M. 1947, 16-3212.

7-6-2413. Limitation on number of deputy county auditors. The whole number of deputies allowed to county auditors must not exceed one in counties of the first, second, and third classes.

History: En. Sec. 2, Ch. 75, L. 1905; re-en. Sec. 3128, Rev. C. 1907; re-en. Sec. 4880, R.C.M. 1921; re-en. Sec. 4880, R.C.M. 1935; amd. Sec. 1, Ch. 97, L. 1939; amd. Sec. 2, Ch. 87, L. 1943; amd. Sec. 7, Ch. 391, L. 1973; R.C.M. 1947, 16-3706(part).

7-6-2414 through 7-6-2420 reserved.

7-6-2421. Presentation of claims against county. (1) No account may be allowed by the board unless the same is made out in separate items, with the nature of each item stated. If the claim is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such services must be stated. No account must be necessarily passed upon by the board unless made out as prescribed in this section and filed by the clerk prior to the session at which it is asked to be heard.

(2) Every claim against the county, except claims arising from injury to a person or property, which are limited under provisions of Title 2, chapter 9, parts 1 through 3, as amended, must be presented within 1 year after the last item accrued.

(3) No county officer may, except for his own service, present any claim, account, or demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(4) Money deposited in the county treasury pursuant to former section 16-2616, R.C.M. 1947, and not otherwise disposed of shall be transferred by the county treasurer to the state treasurer for deposit in the agency fund provided for in Title 72, chapter 14, part 2. The county treasurer may deduct the fees and expenses of the coroner and the county prior to transferring the money.

History: Ap. p. Sec. 4287, Pol. C. 1895; re-en. Sec. 2946, Rev. C. 1907; re-en. Sec. 4609, R.C.M. 1921; Cal. Pol. C. Sec. 4073; re-en. Sec. 4609, R.C.M. 1935; Sec. 16-1807, R.C.M. 1947; Ap. p. Sec. 23, p. 503, Bannack Stat.; re-en. Sec. 23, p. 437, Cod. Stat. 1871; amd. Sec. 1, p. 63, L. 1874; re-en. Sec. 357, 5th Div. Rev. Stat. 1879; re-en. Sec. 762, 5th Div. Comp. Stat. 1887; amd. Sec. 4286, Pol. C. 1895; re-en. Sec. 2945, Rev. C. 1907; re-en. Sec. 4605, R.C.M. 1921; Cal. Pol. C. Sec. 4072; re-en. Sec. 4605, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1957; amd. Sec. 2, Ch. 234, L. 1977; Sec. 16-1802, R.C.M. 1947; (4)En. Sec. 4285, Pol. C. 1805; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; Sec. 16-1801, R.C.M. 1947; (5)En. Sec. 4366, Pol. C. 1895; re-en. Sec. 3002, Rev. C. 1907; re-en. Sec. 4766, R.C.M. 1921; Cal. Pol. C. Sec. 4160; re-en. Sec. 4766, R.C.M. 1935; Sec. 16-2617, R.C.M. 1947; R.C.M. 1947, 16-1801(part), 16-1802, 16-1807, 16-2617; amd. Sec. 1, Ch. 225, L. 1979; amd. Sec. 18, Ch. 252, L. 1979.

7-6-2422. Opposition to claims. Any resident or taxpayer of the county may appear before the board and oppose the allowance of any claim or demand made against the county.

History: En. Sec. 4285, Pol. C. 1805; re-en. Sec. 2944, Rev. C. 1907; re-en. Sec. 4604, R.C.M. 1921; Cal. Pol. C. Sec. 4071; re-en. Sec. 4604, R.C.M. 1935; R.C.M. 1947, 16-1801(part); amd. Sec. 19, Ch. 252, L. 1979.

7-6-2423. Procedure for claims by county commissioners. All claims against the county presented by members of the board for per diem and mileage or other service rendered by them must be verified as other claims and must state that the service has been actually rendered.

History: En. Sec. 4293, Pol. C. 1895; re-en. Sec. 2952, Rev. C. 1907; re-en. Sec. 4607, R.C.M. 1921; Cal. Pol. C. Sec. 4082; re-en. Sec. 4607, R.C.M. 1935; R.C.M. 1947, 16-1805.

7-6-2424. Appeal of decision concerning claim. (1) Whenever a claim against a county is disallowed in whole or in part or whenever any taxpayer or resident of the county is not satisfied with any allowance made by the board, the claimant, taxpayer, or resident may appeal from the decision of the board to the district court for the county by causing a written notice of appeal to be served on the clerk of the board within 30 days after the making of the decision or allowance and executing a bond to the county, with surety to be approved by the clerk of the board, conditioned to prosecute the appeal to effect and to pay all costs that may be adjudged against the appellant.

(2) The clerk of the board, upon an appeal being taken, must immediately give notice thereof to the county attorney and must make out a return of the proceedings in the matter before the board, with its decision thereon, and file the same, together with the bond and all the papers therein in his possession, with the clerk of the district court.

(3) The appeal must be entered, tried, and determined the same as appeals from justices' courts, and costs are awarded in like manner.

History: (1)En. Sec. 25, p. 503, Bannack Stat.; re-en. Sec. 25, p. 437, Cod. Stat. 1871; amd. Sec. 2, p. 63, L. 1874; re-en. Sec. 359, 5th Div. Rev. Stat. 1879; re-en. Sec. 764, 5th Div. Comp. Stat. 1887; amd. Sec. 4288, Pol. C. 1895; re-en. Sec. 2947, Rev. C. 1907; re-en. Sec. 4610, R.C.M. 1921; Cal. Pol. C. Sec. 4075; re-en. Sec. 4610, R.C.M. 1935; Sec. 16-1808, R.C.M. 1947; (2), (3)En. Sec. 26, p. 504, Bannack Stat.; re-en. Sec. 26, p. 437, Cod. Stat. 1871; re-en. Sec. 360, 5th Div. Rev. Stat. 1879; re-en. Sec. 765, 5th Div. Comp. Stat. 1887; amd. Sec. 4289, Pol. C. 1895; re-en. Sec. 2948, Rev. C. 1907; re-en. Sec. 4611, R.C.M. 1921; re-en. Sec. 4611, R.C.M. 1935; Sec. 16-1809, R.C.M. 1947; R.C.M. 1947, 16-1808, 16-1809; amd. Sec. 20, Ch. 252, L. 1979.

7-6-2425. Auditing of county charges. Accounts for county charges of every description must be presented to the board of county commissioners to be audited as prescribed in 7-6-2421, 7-6-2429, and 7-6-2430.

History: En. Sec. 4680, Pol. C. 1895; re-en. Sec. 3198, Rev. C. 1907; re-en. Sec. 4951, R.C.M. 1921; Cal. Pol. C. Sec. 4343; amd. Sec. 1, Ch. 19, L. 1935; re-en. Sec. 4951, R.C.M. 1935; R.C.M. 1947, 16-3801.

7-6-2426. Enumeration of county charges. The following are county charges:

(1) charges incurred against the county by virtue of any provision of this title;

(2) one-half of the salary of the county attorney and all expenses necessarily incurred by him in criminal cases arising within the county;

(3) the salary and actual expenses for traveling, when on official duty, allowed by law to sheriffs and the compensation allowed by law to constables for executing process on persons charged with criminal offenses;

(4) the board of prisoners confined in jail;

(5) the sums required by law to be paid to grand and trial jurors and witnesses in criminal cases;

(6) the accounts of the coroner of the county for such services as are provided by law;

(7) all charges and accounts for services rendered by any justice of the peace for services in the examination or trial of persons charged with crime as provided for by law;

(8) the necessary expenses incurred in the support of county hospitals and poorfarms and in the support of the indigent sick and the otherwise dependent poor whose support is chargeable to the county;

(9) the contingent expenses necessarily incurred for the use and benefit of the county;

(10) every other sum directed by law to be raised for any county purpose under the direction of the board of county commissioners or declared to be a county charge.

History: En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; R.C.M. 1947, 16-3802(1).

7-6-2427. Special provisions for certain charges related to criminal prosecutions. (1) Notwithstanding 7-6-2426, all costs of a criminal prosecution, including attorneys' fees, of an offense committed in the state prison are not charges against the county in which the state prison is located. Such costs shall be paid by the department of institutions.

(2) When a criminal action is removed before trial, the costs accruing upon such removal and trial must be a charge against the county in which the indictment was found or information filed.

History: (1)En. Sec. 4681, Pol. C. 1895; re-en. Sec. 3199, Rev. C. 1907; re-en. Sec. 4952, R.C.M. 1921; Cal. Pol. C. Sec. 4344; re-en. Sec. 4952, R.C.M. 1935; amd. Sec. 3, Ch. 420, L. 1971; amd. Sec. 1, Ch. 72, L. 1975; Sec. 16-3802, R.C.M. 1947; (2)En. Sec. 4682, Pol. C. 1895; re-en. Sec. 3200, Rev. C. 1907; re-en. Sec. 4953, R.C.M. 1921; Cal. Pol. C. Sec. 4345; re-en. Sec. 4953, R.C.M. 1935; Sec. 16-3803, R.C.M. 1947; R.C.M. 1947, 16-3802(2), 16-3803.

7-6-2428. Procedure to collect charges when criminal case is removed. (1) The district court of the county to which a criminal action is removed must certify the amount of costs allowed and certified by the court to the board of county commissioners of the county of the district court. Such board shall audit the same and draw its warrants therefor upon the treasury of the county from which the action was removed. The board drawing the warrants shall forward to the treasurer and board of the county from which the action was transferred a certified copy of the total amount allowed by the court, giving each item as certified to them by the clerk of the district court and the court.

(2) The board receiving the certified copy of the costs allowed shall enter the same in its books as a charge against the treasury of its county. The county treasurer of the county from which the action was removed must, immediately upon presentation, pay the warrants out of the general fund of that county, or if at the time of presentation, there is not sufficient money in the general fund to pay the same, he must endorse upon the warrants "Not paid for want of funds", and the warrants must be registered and draw interest at the same rate and be paid in the same manner as though it had been drawn by the board of the county where the indictment was found or information filed.

History: En. Sec. 4683, Pol. C. 1895; re-en. Sec. 3201, Rev. C. 1907; re-en. Sec. 4954, R.C.M. 1921; Cal. Pol. C. Sec. 4346; re-en. Sec. 4954, R.C.M. 1935; R.C.M. 1947, 16-3804; amd. Sec. 21, Ch. 252, L. 1979.

7-6-2429. Examination and allowance of officers' accounts. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular monthly meeting of the board, to examine and allow the accounts of all officers having the care, management, collection, or disbursement of money belonging to the county or appropriated by law or otherwise for its use and benefit.

History: En. Subd. 11, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.10, R.C.M. 1935; R.C.M. 1947, 16-1013.

7-6-2430. Accounts to be examined, settled, and allowed. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, at the regular meetings of the board, to examine, settle, and allow all accounts legally chargeable against the county, except salaries of officers, and order warrants to be drawn on the county treasury therefor and provide for the issuing of the same.

History: En. Subd. 12, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.11, R.C.M. 1935; R.C.M. 1947, 16-1014; amd. Sec. 22, Ch. 252, L. 1979.

Part 25

County Taxation

7-6-2501. Authorization for county mill levy. The board of county commissioners has jurisdiction and power, under such limitations and reservations as are prescribed by law, to levy such tax annually on the taxable property of the county for county purposes as may be necessary to defray the current expenses thereof, including the salaries otherwise unprovided for, not exceeding 27 mills on each dollar of the taxable valuation for any one year for counties of the fourth, fifth, sixth, and seventh classes and 25 mills on each dollar of the taxable valuation for any one year for counties of the first, second, and third classes and to levy such taxes as are required to be levied by special or local statutes.

History: En. Subd. 13, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.12, R.C.M. 1935; amd. Sec. 1, Ch. 114, L. 1949; amd. Sec. 1, Ch. 169, L. 1951; amd. Sec. 1, Ch. 185, L. 1953; amd. Sec. 1, Ch. 69, L. 1955; amd. Sec. 1, Ch. 48, L. 1957; amd. Sec. 1, Ch. 212, L. 1959; amd. Sec. 1, Ch. 205, L. 1961; amd. Sec. 1, Ch. 33, L. 1963; amd. Sec. 1, Ch. 18, L. 1965; amd. Sec. 1, Ch. 128, L. 1967; amd. Sec. 1, Ch. 283, L. 1969; amd. Sec. 1, Ch. 503, L. 1973; amd. Sec. 1, Ch. 201, L. 1974; R.C.M. 1947, 16-1015.

7-6-2502. Responsibility of county commissioners to fix tax rate and levy tax. The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R.C.M. 1921; Cal. Pol. C. Sec. 3714; re-en. Sec. 2150, R.C.M. 1935; R.C.M. 1947, 84-3805.

7-6-2503. Duties of county treasurer related to taxation. The treasurer is collector of taxes. The county treasurer's duties as collector of taxes are prescribed in this title and Title 15.

History: Ap. p. Sec. 4314, Pol. C. 1895; re-en. Sec. 2959, Rev. C. 1907; re-en. Sec. 4727, R.C.M. 1921; Cal. Pol. C. Sec. 4105; re-en. Sec. 4727, R.C.M. 1935; Sec. 16-2405, R.C.M. 1947; Ap. p. Sec.

4372, Pol. C. 1895; re-en. Sec. 3008, Rev. C. 1907; re-en. Sec. 4772, R.C.M. 1921; re-en. Sec. 4772, R.C.M. 1935; Sec. 16-2626, R.C.M. 1947; R.C.M. 1947, 16-2405(part), 16-2626.

7-6-2504. Duties of county clerk related to taxation. The clerk of the board must record all orders levying taxes.

History: En. Secs. 32, 33, 35, p. 505, Bannack Stat.; re-en. Secs. 32, 33, 35, p. 439, Cod. Stat. 1871; re-en. Sec. 366, 367, 368, 5th Div. Rev. Stat. 1879; re-en. Secs. 770, 771, 773, 5th Div. Comp. Stat. 1887; amd. Sec. 4218, Pol. C. 1895; re-en. Sec. 2889, Rev. C. 1907; re-en. Sec. 4460, R.C.M. 1921; Cal. Pol. C. Sec. 4030; re-en. Sec. 4460, R.C.M. 1935; R.C.M. 1947, 16-908(8).

7-6-2505 through 7-6-2510 reserved.

7-6-2511. County levy for district court expenses. The governing body of each county may each year levy and collect a tax on the taxable property of the county for all district court costs, except those listed in 3-5-211, 3-5-213, and 3-5-215. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. These expenses include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court.

History: En. Sec. 1, Ch. 692, L. 1979.

Compiler's Comments

Sunset provision. Sec. 3, Ch. 692, L. 1979, provided: "This act and the authority granted therein shall terminate June 30, 1983."

7-6-2512 through 7-6-2530 reserved.

7-6-2531. County may exceed maximum mill levy — election required. The governing body of a county may raise money by taxation for the support of county government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;
(b) the specific amount to be raised;
(c) the approximate number of mills required; and
(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the county at the next regular primary election held in the even-numbered years. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: En. Sec. 1, Ch. 613, L. 1979.

7-6-2532. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 2, Ch. 613, L. 1979.

7-6-2533. Notice of election on question of additional mill levy. Whenever the question of making an additional mill levy is submitted to the qualified electors, notice shall be given in the manner prescribed by law for noticing of elections.

History: En. Sec. 3, Ch. 613, L. 1979.

7-6-2534. Form of ballot. (1) If at any time it is desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots.

(2) Each of the ballots shall be in substantially the following form:

Shall the county governing body be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made and the period for which it shall be in effect)?

☐ FOR additional levy

☐ AGAINST additional levy

History: En. Sec. 4, Ch. 613, L. 1979.

7-6-2535. Conduct of election. (1) The electors shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state.

(2) The election shall be held and the votes canvassed and returned as in other county elections as provided in Title 13.

History: En. Sec. 5, Ch. 613, L. 1979.

7-6-2536. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-2532.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the county.

History: En. Sec. 6, Ch. 613, L. 1979.

Compiler's Comments

Code Commissioner correction. An erroneous reference in subsection (1) to "subsection (1)" was changed to "subsection (2)".

7-6-2537. Emergency provisions in effect. Nothing in 7-6-2531 through 7-6-2536 shall affect the emergency levy as provided by law.

History: En. Sec. 7, Ch. 613, L. 1979.

Part 26

County Warrants

7-6-2601. Details related to county warrants. (1) Warrants issued pursuant to 7-6-2202(1) shall be signed by the county clerk and the chairman of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing

with the first Monday in January, must be numbered consecutively. The number, date, and amount of each and the name of the person to whom payable and the purpose for which drawn must be stated thereon; and the warrants must, at the time they are issued, be registered by him.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2)En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979.

7-6-2602. Payment of warrants. (1) When a warrant is presented for payment, if there is money in the treasury for that purpose, the county treasurer must pay the same, write on the face thereof "Paid" and the date of payment, and sign his name thereto. Warrants must be paid in the order of presentation to the treasurer.

(2) The county treasurer must not pay any order or warrant except to the payee thereof or to his agent, assignee, or legal representative, whose authority must be in writing and delivered to him and must be returned with such order or warrant, when paid, to the board of county commissioners.

History: Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part).

7-6-2603. Registration of warrants. (1) If the fund is insufficient to pay any warrant, it must be registered and thereafter paid in the order of its registration.

(2) The county treasurer must not register any county order or warrant in the name of any person other than the payee thereof except at the request of such payee or his agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

History: (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part).

7-6-2604. Interest on unpaid warrants. (1) When any county warrant, any high school warrant, or any school district warrant is presented to the treasurer for payment and the same is not paid for want of funds, the treasurer must endorse thereon "Not paid for want of funds", annexing the date of presentation, and sign his name thereto. When the treasurer pays any warrant on which any interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of such interest, distinct from the principal.

(2) From and after the date of presentation and endorsement by the treasurer, the warrant shall bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and by him endorsed "Not paid for want of funds in the treasury", from and after the date of such presentation and endorsement shall draw interest at the rate fixed by the county board in accordance with law.

History: Ap. p. Se.c 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610.

7-6-2605. Call for payment of warrants drawing interest. (1) When there is sufficient money to pay the warrants drawing interest, the treasurer must give notice in some newspaper published in his county or, if none is published, then by written notice posted upon the courthouse door, stating therein that he is ready to pay such warrants.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer must not publish the warrants in detail but give notice only that county warrants presented for payment prior to such date, stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer must designate such payable warrants in the advertisement.

(3) Such warrants cease to draw interest from the first publication or posting of such notice.

(4) (a) If such warrants be not re-presented for payment within 60 days from the time the notice hereinbefore provided for is given, the fund set aside for the payment of the same must be applied by the treasurer to the payment of unpaid warrants next in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay them out of any money in the treasury not otherwise appropriated.

History: (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609.

7-6-2606. Order of redemption of warrants. (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly applicable to such warrants according to the priority of time in which they were presented. The time of presenting such warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, he must set apart the same or so much thereof as is necessary for the payment of such warrants.

History: En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607.

7-6-2607. Examination and processing of warrants. (1) The board, at its annual March session or more often if necessary, must examine the county warrants returned by the county treasurer by comparing each warrant with the record of warrants issued in the county clerk's office.

(2) The board must cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office, these warrants to be canceled in the same manner as other county warrants. At the same time, the county treasurer must deliver to the board all warrants or vouchers that are in the treasurer's possession for money disbursed by him as treasurer and the clerk must receipt for the same.

(3) The board must cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and must make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the same was payable, and must cause the list to be entered on the minutes of the board.

History: En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979.

Part 27

Investment of County Money

7-6-2701. Investment of certain money in county warrants. (1) Except as provided in 7-6-2802, whenever the county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase county warrants of the same county thereafter issued against funds in which there is not sufficient money to pay such county warrants at the time of issuance. In case of such purchase, the county commissioners shall designate the fund or funds to be so invested and shall fix the amount thereof and shall also designate the county warrant or warrants which are to be purchased by such funds.

(2) The county clerk and recorder shall thereupon cause to be attached to or stamped, written, or printed upon the warrants so ordered to be purchased a notice to the effect that the county will exercise its preference right to purchase such warrant. The county treasurer shall thereafter, when such county warrant is presented to him, purchase the same out of the proper fund as designated by the board. The warrant so purchased shall be registered as other county warrants and bear interest as provided by law. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder.

(3) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(4) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).

7-6-2702. Investment of money held in capital improvement fund. The money held in the capital improvement fund, authorized by 7-6-2219 may be invested as provided by law. All interest earned on the fund must be credited to the capital improvement fund.

History: En. 16-1189 by Sec. 4, Ch. 54, L. 1975; R.C.M. 1947, 16-1189.

Part 28

Management of School Money

7-6-2801. Management of school funds. The county treasurer must:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts which are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform him of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law;

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever such warrants are countersigned by the district clerk and properly endorsed by the holders;

(4) make annually, during the month of September, a financial report for the preceding year ending August 31 to the county superintendent, in such form as is required by him.

History: En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979.

7-6-2802. Investment of proceeds arising from sale of county high school construction bonds. (1) Whenever the county has under its control any money realized from the sale of bonds by a county high school for the purpose of construction, for which there is no immediate demand and which in the judgment of the governing body of the county high school it would be advantageous to invest in any time or savings deposit or in short-term obligations of the United States of America, such governing body may in its discretion direct the county treasurer to make such investments.

(2) Interest earned from such investments, except interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, which must be credited to the sinking fund, may be credited to the sinking fund of the county high school, provided that in the event construction of said buildings is delayed for a period longer than 6 months due to court action or other causes beyond the control of the trustees, the trustees may direct that interest earned be credited to the fund from which the money was withdrawn. The trustees may authorize expenditures from interest earned, except as provided above, for furnishing and equipping the buildings for which the bonds were sold.

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(2), (3).

Parts 29 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-6-4101. Fiscal year for municipalities. The fiscal year of cities and towns commences on July 1 of each year and ends on June 30 of the following year.

History: En. Sec. 4873, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3359, Rev. C. 1907; re-en. Sec. 5217, R.C.M. 1921; amd. Sec. 1, Ch. 25, L. 1927; re-en. Sec. 5217, R.C.M. 1935; R.C.M. 1947, 84-4730; amd. Sec. 26, Ch. 252, L. 1979.

7-6-4102. Appropriation of money and payment of debts and expenses. The city or town council has power to appropriate money and provide for the payment of the debts and expenses of the city or town and also the debts of the municipal corporation of which it is the successor.

History: En. Subd. 76, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.75, R.C.M. 1935; R.C.M. 1947, 11-978.

7-6-4103. Annual appropriation. The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the .... of .... for the fiscal year beginning July 1, 19..", in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year. There must be specified therein the amount appropriated for each separate object or fund and the salary or compensation to be paid to each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R.C.M. 1921; amd. Sec. 2, Ch. 25, L. 1927; re-en. Sec. 5218, R.C.M. 1935; R.C.M. 1947, 84-4731.

7-6-4104. Duties of city treasurer relating to finances. It shall be the duty of the city treasurer:

(1) to receive all money that comes to the city, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(2) to give every person paying money to him, as treasurer a receipt therefor, specifying the date of payment, the amount, and for what paid;

(3) to pay out, in the order they are registered, all warrants presented for payment, when there are funds in the treasury to pay the same.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4105. Financial reports and records to be maintained by city treasurer. It shall be the duty of the city treasurer:

(1) to present, on the first Monday of each month to the council a full and detailed statement of the amounts of money belonging to the city received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the city council at its last meeting prior to May 1 a detailed account of all receipts and expenditures during the past fiscal year and to file the same with the clerk;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, called "The Registry Book", which must show the date, amount, and number and the person to whom and the fund from which the same was paid; and

(7) to deliver and file with the city clerk all vouchers, warrants, or orders paid by him.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4106. Publication or posting of annual statement of city receipts and expenditures. An abstract of the account of receipts and expenditures required by 7-6-4105(4) must be published in some newspaper in the city, or if none is published, such abstract must be posted in the room or building occupied by the council.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part).

7-6-4107. Duties of the city clerk related to finance. It is the duty of the clerk to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the city treasury. Such book is called "The Finance Book".

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-6-4108. Duties of town clerk related to finance. (1) It shall be the duty of the town clerk:

(a) to receive all money that comes to the town, either from taxation or otherwise, and to pay the same out on the warrant of the mayor, countersigned by the clerk, drawn in accordance with law;

(b) to give every person paying money to him as town clerk a receipt therefor, specifying the date of payment, the amount, and for what paid;

(c) to pay out, in the order they are registered, all warrants presented for payment when there are funds in the treasury to pay the same.

(2) The statutory functions and duties of a town treasurer provided in this title are transferred to the town clerk. Any reference to a town treasurer means the town clerk.

History: (1)En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; (2)En. 11-805.2 by Sec. 5, Ch. 146, L. 1974; Sec. 11-805.2, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-805.2.

7-6-4109. Financial reports and records to be maintained by town clerk. It shall be the duty of the town clerk:

(1) to present, on the first Monday of each month, to the council a full and detailed statement of the amounts of money belonging to the town received by him and disbursed by him during the preceding month and the state of each particular fund, which statement must be verified by his oath;

(2) to keep the books and accounts of the city or town in such manner as to correctly present the condition of the finances thereof, which must always be open to the inspection of the mayor or the council or any member thereof;

(3) to render at any time an account to the council, showing the money on hand and the condition of the treasury;

(4) to annually make out and submit to the town council, at its last meeting prior to May 1, a detailed account of all receipts and expenditures during the past fiscal year;

(5) to keep a separate account of each fund or appropriation and the debits and credits thereof;

(6) to keep a register of all warrants paid, which must show the date, amount, and number and the person to whom and the fund from which the same was paid and to enter in a book kept for that purpose the date, amount, and person in whose favor and for what purpose warrants are drawn upon the town treasury.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-6-4110. Publication or posting of annual statement of town receipts and expenditures. An abstract of the annual account of receipts and expenditures required by 7-6-4109(4) must be published in some newspaper in the city or town, or if none is published, such abstract must be posted in the room or building occupied by the council.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part).

7-6-4111. Annual financial statement. (1) Within 60 days after the close of each fiscal year, the city or town clerk of each city and town must make out, in duplicate, a complete statement of the financial condition of the city or town for that fiscal year, showing:

(a) the indebtedness of the city or town, funded and floating; the amount of each class of indebtedness; and the amount of money in the treasury subject to the payment of each class of indebtedness;

(b) the amount of money received from taxes upon real and personal property;

(c) the amount of money received from fines, penalties, and forfeitures;

(d) the amount of money received from licenses;

(e) the amount of money received from all other sources, each source and the amount received from it being shown separately;

(f) for each fund, the amount of money, if any, on hand at the beginning of the fiscal year, the amount received, and the amount paid out during the fiscal year;

(g) a concise description of all property owned by the city or town, with an approximate estimate of the value of it;

(h) the rates of taxation and purposes for which taxes were levied during the fiscal year;

(i) other information which may be required by the department of community affairs.

(2) The forms on which the statement shall be made shall be prescribed by the department.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part).

7-6-4112. Funds to be balanced. The amount of money paid out from each fund must be deducted from the total of the money on hand at the beginning of the fiscal year and the money received during the year, and a balance must be struck for each fund.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(part).

7-6-4113. Filing of annual financial statement. (1) The city or town clerk must, not later than August 31 following the close of each fiscal year, transmit one copy of the statement to the department of community affairs and must present the other copy to the city or town council or commission at its first regular meeting in September.

(2) If a city or town clerk fails to file a copy of the statement with the department within the time specified, the department, without delay, shall examine the books, records, and accounts of the city or town. The department shall make from its examination a statement of the financial condition of the city or town for the preceding fiscal year in the manner it should have been made by the city or town clerk. The examination shall be considered a special audit under the provisions of subsections (4) and (5) of 2-7-503, and all of the provisions of subsections (4) and (5) of 2-7-503 apply to it.

History: En. Sec. 1, Ch. 24, L. 1927; re-en. Sec. 5033.1, R.C.M. 1935; amd. Sec. 1, Ch. 19, L. 1945; amd. Sec. 48, Ch. 348, L. 1974; amd. Sec. 11, Ch. 213, L. 1975; R.C.M. 1947, 11-806(3), (4); amd. Sec. 27, Ch. 252, L. 1979.

7-6-4114 through 7-6-4120 reserved.

7-6-4121. Authorization to conduct municipal business on a cash basis. (1) In case the total indebtedness of a city or town has reached 11% of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be paid out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds therein provided for and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims.

History: (1)En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; Sec. 11-1301, R.C.M. 1947; (2)En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; Sec. 11-1302, R.C.M. 1947; R.C.M. 1947, 11-1301(part), 11-1302(part); amd. Sec. 28, Ch. 252, L. 1979.

7-6-4122. Manner of making payment for judgments against municipalities. (1) On the certificate of a justice of the peace or the clerk of the court in which any judgment is rendered, showing the amount of the judgment and the date of its entry, the council must by ordinance direct that the amount of such judgment be paid out of the general fund and that a warrant issue therefor on the general fund if there is sufficient money therein, exclusive of the appropriations for the current fiscal year, to pay the same.

(2) (a) The council must at the proper times levy and cause to be collected a tax on all the property of the city or town for the payment of such judgment within a period of 3 years from its presentation if there is not sufficient money as aforesaid in the general fund to pay the same.

(b) If any judgment rendered against any town or city exceeds the sum of $10,000, the council may fund the same as other indebtedness against the city or town is funded.

History: Ap. p. Sec. 5037, Pol. C. 1895; re-en. Sec. 3486, Rev. C. 1907; re-en. Sec. 5084, R.C.M. 1921; Cal. Pol. C. Sec. 4455; re-en. Sec. 5084, R.C.M. 1935; Sec. 11-1501, R.C.M. 1947; Ap. p. Sec. 5038, Pol. C. 1895; re-en. Sec. 3487, Rev. C. 1907; re-en. Sec. 5085, R.C.M. 1921, re-en. Sec. 5085, R.C.M. 1935; Sec. 11-1502, R.C.M. 1947; R.C.M. 1947, 11-1501, 11-1502.

7-6-4123. Procedure to transfer municipal funds. No money must be transferred from one fund to another except by ordinance or resolution of the council.

History: En. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5035, R.C.M. 1921; re-en. Sec. 5035, R.C.M. 1935; R.C.M. 1947, 11-808.

7-6-4124. Procedure to close inactive accounts. Whenever the council of any city or town having a corporate existence in this state shall deem it necessary to remove inactive accounts from its records, where said accounts shall not have any further purpose, it shall be lawful for said council to direct the proper city or town officials to file claims against the respective inactive funds in favor of the general fund of said city or town, after which the council shall allow the same and cause the inactive funds to be closed and not continued in the record of active funds.

History: En. Sec. 1, Ch. 57, L. 1939; R.C.M. 1947, 11-809.

7-6-4125 through 7-6-4130 reserved.

7-6-4131. Allocation and appropriation of all-purpose levy. (1) In the event the all-purpose levy method provided for in 7-6-4452 is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance or in other legal manner, as the governing body of such municipality shall deem best.

(2) Any municipality which has adopted an urban renewal plan may allocate the funds raised by its levy within the urban renewal area in accordance with the provisions of its urban renewal plan.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971; amd. Sec. 6, Ch. 287, L. 1974; R.C.M. 1947, 84-4701.3.

7-6-4132. Distribution of all-purpose levy. The money received from the all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part).

7-6-4133. Deposit of revenues from certain sources in all-purpose fund. Cities and towns making the all-purpose annual mill levy shall deposit into the all-purpose general fund all money received from other sources, including fees, charges, and fines received from the operation of airports, libraries, swimming pools, parking lots, golf courses, and any other operation supported in part or whole from an appropriation of the all-purpose levy and not otherwise provided by law.

History: En. Sec. 1, Ch. 131, L. 1973; R.C.M. 1947, 11-1414.

7-6-4134. Capital improvement program fund. An amount not to exceed 5% of the money received from and as a part of the aforesaid all-purpose levy may be placed in a separate fund, known as the capital improvement program fund, to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000, with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(2).

7-6-4135. Investment of money in capital improvement program fund. The money held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and shall be credited back to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(3).

Part 42

Municipal Budget Law

7-6-4201. Short title. This part may be referred to as the "Municipal Budget Law".

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4202. Definitions. As used in this part, the following definitions apply:

(1) The term "clerk" shall mean the clerk of the city.

(2) The term "council" shall mean city council or city commission.

(3) The terms "municipal corporation" or "municipality" shall mean city.

(4) The terms "treasurer" or "city treasurer" shall mean the city treasurer or the town clerk, whichever is appropriate.

History: (1) thru (3)En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; Sec. 11-1401, R.C.M. 1947; (4)En. by Code Commissioner, 1979; R.C.M. 1947, 11-1401(part).

7-6-4203. Scope of part. The provisions of this part shall apply to all cities in this state.

History: En. Sec. 1, Ch. 121, L. 1931; re-en. Sec. 5083.1, R.C.M. 1935; R.C.M. 1947, 11-1401(part).

7-6-4204. Construction of part. This part shall not be construed to create any new fund or funds or to authorize a levy to be made for any fund in excess of the limitation prescribed by existing law or acts amendatory thereof.

History: En. Sec. 11, Ch. 121, L. 1931; re-en. Sec. 5083.11, R.C.M. 1935; R.C.M. 1947, 11-1412.

7-6-4205. Role of department of community affairs. The department of community affairs shall make rules and classifications and prescribe forms necessary to carry out the provisions of this part. It shall define what expenditures are chargeable to each budget account and shall establish accounting and cost systems necessary to provide accurate budget information.

History: En. Sec. 2, Ch. 121, L. 1931; re-en. Sec. 5083.2, R.C.M. 1935; R.C.M. 1947, 11-1411.

7-6-4206. Violations. Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 121, L. 1931; re-en. Sec. 5083.12, R.C.M. 1935; R.C.M. 1947, 11-1413.

7-6-4207 through 7-6-4220 reserved.

7-6-4221. Filing of estimate of revenues and expenses with clerk. (1) Before July 1 of each year the clerk of each city shall notify in writing each official in charge of an office, department, service, or institution of the municipality to file with the clerk, before July 10, detailed and itemized estimates, both of the probable revenues from sources other than taxation and of all expenditures required by the office, department, service, or institution for the current fiscal year.

(2) (a) The council shall submit to the clerk the estimate of expenditures for all purposes for the council. The council shall also submit to the clerk detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bond issues not yet authorized and from the proceeds of tax levies which are required to be submitted to and approved at an election to be held.

(b) The mayor of the municipality shall submit to the clerk a detailed estimate showing the amount to be appropriated from funds belonging to the municipality to defray the municipality's portion of the cost of making improvements in special improvement districts and maintaining them and of installing lighting systems in special lighting districts and maintaining them.

(c) The city treasurer shall prepare the estimates for interest and debt reduction.

(d) The clerk shall prepare all other estimates which properly fall within the duties of his office.

(3) The estimates required in this section shall be submitted on forms provided by the clerk and prescribed by the department of community affairs. The form may be varied or departed from only with permission and approval of the department. Each of the officials shall file the estimates within the time and in the manner provided in the form and notice.

(4) In the absence or disability of an official, the duties required in this section or 7-6-4223 devolve upon the official or employee in charge of the office, department, service, or institution for the time being.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part).

7-6-4222. Exclusion of certain items from estimate and budget. There may not be included in the estimate or in either the preliminary or final budget of a municipality any part of that cost which is to be paid by special assessments against the property within the districts or any part of the cost in sprinkling districts which is to be defrayed by special assessments against the property in the sprinkling districts.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part).

7-6-4223. Penalty for noncompliance with filing requirements. (1) The clerk shall deduct and withhold as a penalty from the salary or compensation of each official failing or refusing to file the estimate the sum of $10 for each day of delay. The total penalty against an official may not exceed $50 per year.

(2) The notice provided for in 7-6-4221 shall contain a copy of this penalty clause.

History: En. Sec. 3, Ch. 121, L. 1931; re-en. Sec. 5083.3, R.C.M. 1935; amd. Sec. 49, Ch. 348, L. 1974; amd. Sec. 12, Ch. 213, L. 1975; R.C.M. 1947, 11-1403(part).

7-6-4224. Preparation of expenditure program and information on sources of revenue. (1) From estimates of revenue and disbursements, the clerk shall prepare a tabulation showing the complete expenditure program of the municipality for the current fiscal year and the sources of revenue by which it is to be financed.

(2) The tabulation shall set forth:

(a) the estimated receipts from all sources other than taxation for each office, department, service, or institution for the current fiscal year;

(b) the actual receipts for the last completed fiscal year;

(c) the surplus or unencumbered treasury balances at the close of that last fiscal year;

(d) the amount necessary to be raised by taxation;

(e) the estimated expenditure for each office, department, service, or institution for the current fiscal year;

(f) the actual expenditures for the last completed fiscal year;

(g) all contracts or other obligations which will affect the current year revenues;

(h) the total amount of emergency warrants issued during the preceding fiscal year, with the amount issued for each emergency and the amount issued against each fund.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(1), (4).

7-6-4225. Classification of estimates, appropriations, and expenditures. (1) In the tabulation required by 7-6-4224, the estimates, appropriations, and expenditures shall be classified as:

(a) salaries and wages;

(b) maintenance and operation;

(c) capital outlay;

(d) interest and debt redemption;

(e) miscellaneous; and

(f) expenditures proposed to be made from bond issues not yet authorized or from the proceeds of a tax levy or levies which are required to be submitted to and approved at an election to be held later.

(2) (a) Within the class of salaries and wages, each salary shall be set forth separately, together with the title or position of the recipient. An unitemized appropriation may be made to cover the expenses of special deputies or assistants in an office where the services of the special deputies or assistants may be required during a part of the fiscal year only. Wages for day labor may be given in totals by designating the general purpose or object for which the expenditure is to be made, but the proposed rate per day for each class or kind of labor shall be set forth.

(b) Expenditures under the general class of maintenance and operation shall be classified according to a standard classification to be established by the department of community affairs.

(c) Expenditures for capital outlay shall set forth and describe each object of expenditure separately.

(d) Under the general class of interest and debt redemption, proposed expenditures for interest and for redemption of principal shall be set forth separately for each series or issue of bonds, and warrant interest and redemption requirements shall be set forth in a similar manner.

(e) Under the general class of miscellaneous, expenditures for all purposes not listed in or which cannot properly be assigned to any of the general classes shall be set forth and itemized in detail.

History: En. Sec. 4, Ch. 121, L. 1931; re-en. Sec. 5083.4, R.C.M. 1935; amd. Sec. 50, Ch. 348, L. 1974; amd. Sec. 13, Ch. 213, L. 1975; R.C.M. 1947, 11-1404(2), (3).

7-6-4226. Consideration of tabulation by council — preparation of preliminary budget. (1) The tabulation shall be submitted to the council by the clerk on or before July 20.

(2) Upon receipt thereof, the council shall immediately consider the same in detail and shall, on or before July 25, make any revisions, reductions, additions, or changes therein that they deem advisable. Such tabulation, with such revisions, reductions, additions, or changes as have been made therein as herein provided, shall constitute the preliminary budget of the municipality for the fiscal year which it is intended to cover.

History: En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part).

7-6-4227. Notice of hearing on preliminary budget. (1) The council shall then cause a notice to be published stating that:

(a) the council has completed its preliminary municipal budget for the current fiscal year;

(b) the budget has been placed on file and is open to inspection in the office of the clerk of the municipality;

(c) the council will meet on the Wednesday immediately preceding the second Monday in August for the purpose of fixing the final budget and making appropriations, designating the time and place when and where such meeting will be held; and

(d) any taxpayer or resident may appear at the meeting and be heard for or against any part of the budget.

(2) The notice shall be published at least one time in the official newspaper of the municipality or, if there is none, then in a newspaper of general circulation in the county in which the municipality is situated.

History: **En. Sec. 5, Ch. 121, L. 1931; re-en. Sec. 5083.5, R.C.M. 1935; R.C.M. 1947, 11-1405(part); amd. Sec. 29, Ch. 252, L. 1979.**

7-6-4228. Hearing on preliminary budget. (1) On the Wednesday preceding the second Monday in August, the council shall meet at the time and place designated in the notice provided in 7-6-4227, at which time any taxpayer or resident may appear and be heard for or against any part of the budget. The council may call in the official in charge of an office, department, service, or institution, at the time the estimates for their respective offices are under consideration, for examination concerning the estimates. The official shall be called in by the council, upon the request of a taxpayer or resident, for questioning upon the estimates either by the council, taxpayer, or resident.

(2) The hearing shall be continued from day to day and shall be concluded and the budget finally approved and adopted on the second Monday in August, prior to the fixing of the tax levies by the council.

History: **En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(1); amd. Sec. 30, Ch. 252, L. 1979.**

7-6-4229. Determination of projected fund cash flow following hearing. (1) Upon the conclusion of the hearing, the council shall first determine the amount estimated to accrue to each fund during the fiscal year from all sources except the taxation of property. In so doing, the council may not include any amount anticipated from the payment of taxes which became delinquent during a preceding fiscal year.

(2) The council shall then determine separately the amount appropriated for and authorized to be spent for each item in the budget and shall specify the fund against which warrants are to be drawn for the expenditures so authorized. There may not be added to the amount appropriated and authorized to be spent for an item or purpose or to the total amount appropriated and authorized to be spent from any fund, other than a fund for the payment of principal or interest on outstanding bonds, any amount because of anticipated loss of revenue by reason of nonpayment of taxes levied for the fiscal year. The expenditures authorized from a fund, including reserve, may not exceed the aggregate of:

(a) the cash balance in the fund at the close of the preceding fiscal year in excess of outstanding unpaid warrants against the fund at the close of that fiscal year;

(b) the amount of estimated revenues to accrue to the fund; and

(c) the amount which may be raised for the fund by a lawful tax levy during the fiscal year.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(2).

7-6-4230. Determination of fund requirements to be met by tax levy. (1) Following the determinations required by 7-6-4229, the council shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated revenues, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount so obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the council in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund by tax levy during the current fiscal year.

(2) The council may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount added to any fund as a reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, must not exceed the total amount which may be raised for the fund by a tax levy which does not exceed the maximum levy permitted by law to be made for the fund.

History: En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(3).

7-6-4231. Final budget — approval and adoption. (1) The budget as finally determined, in addition to setting out separately each item for which an appropriation is made or expenditure authorized and the fund out of which it is to be paid, shall set out:

(a) the total amount appropriated and authorized to be spent from each fund;

(b) the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year;

(c) the amount estimated to accrue to the fund from sources other than taxation;

(d) the reserve for the next fiscal year; and

(e) the amount necessary to be raised for each fund by tax levy during the current fiscal year.

(2) The council shall then by resolution approve and adopt the budget as finally determined, and the clerk shall enter it at length in the official minutes of the council.

History: **En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(4).**

7-6-4232. Fixing of tax levy. (1) On the second Monday in August and after the approval and adoption of the final budget, the council shall fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, which will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the current fiscal year. The taxable valuation of the city for the current fiscal year shall be the basis for determining the amount of the tax levy for each fund, and each tax levy shall be at a rate no higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy shall be made in the manner provided by 15-10-201.

History: **En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(5); amd. Sec. 31, Ch. 252, L. 1979.**

7-6-4233. Budget and tax levies to be supplied to department of community affairs. (1) The city clerk shall, not later than September 15, forward a complete copy of the final budget, together with the tax levies, to the department of community affairs.

(2) If a city clerk fails to forward the copy of the budget to the department within the time required, the department shall, before October 1, notify the mayor and council of the city that a copy of the budget has not been forwarded by the city clerk. The council must then withhold from the city clerk his salary or compensation for the month of September until the city clerk presents the council with a notice from the department that the copy of the budget has been received.

History: **En. Sec. 6, Ch. 121, L. 1931; re-en. Sec. 5083.6, R.C.M. 1935; amd. Sec. 1, Ch. 129, L. 1941; amd. Sec. 51, Ch. 348, L. 1974; amd. Sec. 14, Ch. 213, L. 1975; R.C.M. 1947, 11-1406(6).**

7-6-4234. Effect of exceeding budget appropriations — personal liability. (1) Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations, as originally determined or as thereafter revised by transfer as provided in this part, shall not be a liability of the municipality, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his official bond.

(2) (a) The council shall not approve any claim and the clerk shall not issue any warrant for any expenditure in excess of said detailed budget

appropriations, as finally adopted or as revised under the provisions of this part, except upon an order of a court of competent jurisdiction or for an emergency as hereinafter provided. Any municipal officer or officers approving any claim or issuing any warrant in excess of any such budget appropriation except as above provided shall forfeit to the city fourfold the amount of such claim or warrant.

(b) The amount forfeited under subsection (2)(a) shall be recovered in an action against such officer or officers or all of them and their several sureties on their official bonds. It shall be the duty of the city attorney to bring an action therefor in the name of the municipal corporation.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(3).

7-6-4235. Limitations on appropriations after budget adopted. (1) The estimates of expenditures, itemized and classified as required in 7-6-4224 and 7-6-4225 and as finally fixed and adopted by said council, shall constitute the appropriations for the municipality for the fiscal year intended to be covered thereby.

(2) Except as provided in 7-6-4236, the council and every other municipal official shall be limited in the making of expenditures or incurring of liabilities to the amount of such detailed appropriations and classifications, respectively.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4236. Transfer of appropriations within and among expenditure classes. (1) Upon a resolution adopted by the council at a regular or special meeting and entered upon its minutes, transfers or revisions within the general class of salaries and wages and of maintenance and support may be made, provided that no salary shall be increased above the amount appropriated therefor.

(2) (a) Except as provided in subsection (2)(b), transfers between the general classes provided in 7-6-4225 shall not be permitted.

(b) In the case of appropriations to be expended from municipal road or bridge funds, any transfer may be made between or among the general classes of:

(i) salaries and wages;
(ii) maintenance and support; and
(iii) capital outlay.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4237. Use of bond proceeds and borrowed money. (1) Money received from borrowing shall be used for no other purpose than that for which borrowed, except that if any surplus remains after the accomplishment of the purpose for which borrowed, it shall be used to redeem the municipal debt.

(2) Where any budget shall contain an expenditure program to be financed from a bond issue to be authorized thereafter, no expenditure shall be made or obligation incurred thereunder until such bonds have been duly authorized and the proceeds are available.

(3) The authorization of a bond issue by the electors or by the governing body of the city where an election is not required shall constitute an appropriation of the bond proceeds to the purpose for which the bonds are authorized, whether or not such purpose is included in a budget previously adopted, but no warrants shall be drawn, expenditures made, or obligations incurred in excess of such appropriation except pursuant to an additional appropriation included in a regularly adopted budget.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4238. Restriction on tax-financed expenditures if voter approval of tax levy required. Where any expenditure program is to be financed from a tax levy required to be authorized and approved at an election, no expenditure shall be made or obligation incurred thereunder until such levy is so authorized and approved.

History: En. Sec. 7, Ch. 121, L. 1931; re-en. Sec. 5083.7, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1957; R.C.M. 1947, 11-1408(part).

7-6-4239. Procedure when there exist unpaid and outstanding warrants at end of fiscal year. (1) When at the end of any fiscal year any city has warrants outstanding and registered against any fund, other than warrants issued by reason of any emergency budget or budgets, and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation to pay such warrants or a substantial part thereof with the interest thereon. The amount of such appropriation shall be fixed and determined by the city council but must, in any event, be at least 10% of the amount which the levy for the fund will produce if the amount of such outstanding and registered warrants, with interest thereon, equals or exceeds such amount.

(2) When at the end of any fiscal year any city has outstanding registered emergency warrants against any fund issued by reason of any emergency budget or budgets and is without sufficient cash in such fund to pay the same with interest thereon, the city council must, in the annual budget for such fund for the immediately following fiscal year, make an appropriation sufficient to pay such warrants with interest thereon.

(3) None of the provisions of this section shall be construed as authorizing a levy to be made for any fund in excess of the limitation prescribed by existing law or acts hereafter enacted amendatory thereof.

History: En. Sec. 1, Ch. 53, L. 1943; re-en. Sec. 5083.6A, R.C.M. 1935; R.C.M. 1947, 11-1407.

7-6-4240. Lapse of appropriation. (1) Subject to the provisions of subsection (2), all appropriations, other than the appropriations for uncompleted improvements in progress of construction, shall lapse at the end of the fiscal year.

(2) The appropriation accounts shall remain open for a period of 30 days after the end of the fiscal year for the payment of claims incurred against such appropriations prior to the close of the fiscal year and remaining unpaid. After such period shall have expired, all appropriations, except as hereinbefore provided regarding uncompleted improvements, shall become

null and void, and any lawful claim presented thereafter against any such appropriation shall be provided for in the ensuing budget.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(7).

7-6-4241. Clerk's report concerning expenditures, liabilities, and appropriations. At the first meeting of the council in each month, the clerk shall submit to the council a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the fiscal year to the first day of the month in which such report is made, together with the unexpended balance of each appropriation. He shall also set forth the receipts from taxes and in detail the receipts from all other sources by each fund for the same period.

History: En. Sec. 9, Ch. 121, L. 1931; re-en. Sec. 5083.9, R.C.M. 1935; R.C.M. 1947, 11-1410.

7-6-4242 through 7-6-4250 reserved.

7-6-4251. Procedure to make expenditures and incur liabilities in case of serious emergencies. Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection; for the immediate preservation of order or of public health; for the restoration of a condition of usefulness of any public property the usefulness of which has been destroyed by accident; for the relief of a stricken community overtaken by calamity; in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the municipality; or to meet mandatory expenditures required by law, the council may, upon adoption by unanimous vote of all members present at any meeting (the time and place of which all members shall have had reasonable notice) of a resolution stating the facts constituting the emergency, an estimate of the amount required to be expended, and the fund against which emergency warrants are to be issued and upon entering the same upon their minutes, make the expenditures or incur the liabilities necessary to meet such emergency without further notice or hearing.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(4).

7-6-4252. Procedure to make expenditures and incur liabilities in case of other emergencies. (1) In a public emergency other than those described in 7-6-4251 and which could not reasonably have been foreseen at the time of making the budget, the council, by unanimous vote of the members present at any meeting (the time and place of which all of the members shall have had reasonable notice), shall adopt and enter upon their minutes a resolution stating the facts constituting the emergency, the estimated amount of money required to meet the emergency, and the fund against which emergency warrants shall be drawn.

(2) The council shall publish the resolution, together with a notice that a public hearing will be held on the resolution at the time and place designated in the notice, once in the official newspaper of the municipality and, if there is none, then in a newspaper of general circulation in the county in

which the municipality is situated. The hearing may not be less than 1 week after the date of publication.

(3) Any taxpayer or resident of the municipality may appear at the hearing and be heard for or against the expenditure of money for the alleged emergency.

(4) (a) Upon the conclusion of the hearing, if the council approves the emergency expenditure, it shall make and enter upon its official minutes, by unanimous vote of all of the members of the council present at the meeting, an order setting forth the facts constituting the emergency, together with the amount of expenditure authorized therefor by them and the fund against which emergency warrants shall be drawn. Subject to the limitations of subsection (4)(b), the order is lawful authorization for them to expend such amount, but no more, for such purpose.

(b) No expenditure may be made or liability incurred pursuant to the order until 5 days, exclusive of the day of entry of the order, elapse.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 32, Ch. 252, L. 1979.

7-6-4253. Appeal of order for certain emergency expenditures. (1) During the 5-day period provided by 7-6-4252(4)(b), any taxpayer or resident of the municipality feeling aggrieved by the order issued pursuant to 7-6-4252(4) may appeal therefrom to the district court for the county in which the municipality is situated by filing with the clerk of the court a verified petition, a copy of which has theretofore been served upon the clerk of the municipality. The petition shall set forth in detail the objections of the petitioner to the order, giving reasons why the emergency does not exist.

(2) Until final determination of the matter by the court, the service and filing of the petition operates to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder.

(3) Upon the filing of the petition, the court shall immediately fix a time for hearing the petition, which time shall be at the earliest convenient time. At the hearing the court shall hear the matter de novo and may take such testimony as it considers necessary. The court's proceedings shall be summary and informal, and its determination as to whether an emergency such as is contemplated within the meaning and provisions of this part exists or not and whether the expenditure authorized by the order is excessive or not is final.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(part); amd. Sec. 33, Ch. 252, L. 1979.

7-6-4254. Limitation on amount of emergency budgets and appropriations. (1) The total of all emergency budgets and appropriations made therein in any one year and to be paid from any city fund shall not exceed 25% of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the county.

(2) The term "taxable property", as used herein, means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes and does not mean the assessed value of such property as the same appears on the assessment roll.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(3).

7-6-4255. Use of emergency warrants. (1) All emergency expenditures shall be made by the issuance of emergency warrants drawn against the fund or funds properly chargeable with such expenditures. The city treasurer is authorized and directed to pay such emergency warrants with any money in such fund or funds available for such purpose. If at any time there shall not be sufficient money available in such fund or funds to pay such warrants, then such warrants shall be registered, bear interest, and be called in for payment in the manner provided by law for other city warrants.

(2) The clerk shall include in his annual tabulation to be submitted to the council the total amount of emergency warrants issued during the preceding fiscal year. Subject to the provisions of subsection (3), the council shall, in their tax levies, include a levy for each fund sufficient to raise an amount equal to the total amount of such warrants, if there be any, remaining unpaid at the close of such preceding fiscal year because of insufficient money in such fund to pay the same.

(3) (a) No levy shall be made for any fund in excess of the levy authorized by law to be made therefor.

(b) The council may submit the question of funding such emergency warrants at an election as provided by law. If at any such election the issuing of such funding bonds be authorized, it shall not then be necessary for any levy to be made for the purpose of paying such emergency warrants.

History: En. Sec. 8, Ch. 121, L. 1931; re-en. Sec. 5083.8, R.C.M. 1935; amd. Sec. 2, Ch. 53, L. 1943; R.C.M. 1947, 11-1409(5), (6).

Part 43

Claims Against Municipalities

7-6-4301. Presentation of claims against municipality. (1) All accounts and demands against a city or town must be presented to the council, duly itemized. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. No action may be maintained against the city or town for or on account of any demand or claim against the city or town until such demand or claim has first been presented to the council.

(2) All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent.

(3) Any claim or demand not so presented within this time is forever barred, and the council has no authority to allow any account or demand not so presented.

History: En. Sec. 4812, Pol. C. 1895; re-en. Sec. 2, Ch. 30, L. 1903; re-en. Sec. 3288, Rev. C. 1907; re-en. Sec. 5078, R.C.M. 1921; re-en. Sec. 5078, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1957; amd. Sec. 25, Ch. 566, L. 1977; R.C.M. 1947, 11-1301(part).

7-6-4302. Payment of claims by warrant. Except as provided in 7-6-4121, all accounts and demands against a city or town must be submitted to the council and, if found correct, must be allowed and an order must be made that the demand be paid. The mayor must draw a warrant upon the treasury in favor of the owner, specifying for what purpose and by what authority it is issued and out of what funds it is to be paid. The city treasurer or town clerk must pay the warrant out of the proper fund.

History: En. Sec. 1, Ch. 30, L. 1903; re-en. Sec. 3287, Rev. C. 1907; re-en. Sec. 5079, R.C.M. 1921; re-en. Sec. 5079, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1973; R.C.M. 1947, 11-1302(part); amd. Sec. 34, Ch. 252, L. 1979.

Part 44

Municipal Taxation

7-6-4401. General taxing power of municipalities. The city or town council has power to levy and collect taxes for general and special purposes on all property within the town or city subject to taxation under the laws of the state.

History: En. Subd. 2, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.1, R.C.M. 1935; R.C.M. 1947, 11-902.

7-6-4402. Tax-related duties of city treasurer. It is the duty of the city treasurer to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; amd. Sec. 3, Ch. 146, L. 1974; R.C.M. 1947, 11-807(part); amd. Sec. 35, Ch. 252, L. 1979.

7-6-4403. Tax-related duties of city clerk. It is the duty of the clerk to perform such duties in and about the assessment, levy, and collection of taxes and assessments as may be prescribed by law or ordinance.

History: En. Sec. 4784, Pol. C. 1895; re-en. Sec. 3253, Rev. C. 1907; re-en. Sec. 5033, R.C.M. 1921; Cal. Pol. C. Sec. 4393; re-en. Sec. 5033, R.C.M. 1935; R.C.M. 1947, 11-805(part).

7-6-4404. Tax-related duties of town clerk. It is the duty of the town clerk to perform such duties in the collection of taxes, license fees, or assessments as are prescribed by law or ordinance.

History: En. 11-805.1 by Sec. 4, Ch. 146, L. 1974; R.C.M. 1947, 11-805.1(part); amd. Sec. 36, Ch. 252, L. 1979.

7-6-4405. Limitation on tax levy for general municipal or administrative purposes. The amount of taxes to be levied for general municipal or administrative purposes in cities and towns may not exceed 2.4% of the taxable value of the property of the city or town subject to taxation.

History: En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).

7-6-4406. Authority to levy special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in this title.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R.C.M. 1921; re-en. Sec. 5200, R.C.M. 1935; R.C.M. 1947, 84-4712.

7-6-4407. Resolution to fix annual tax levy. (1) The council must, on or before the second Monday of August of each year, by resolution determine the amount of the city or town taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year.

(2) (a) Except as provided in subsection (2)(b), the city or town clerk must at once certify to the county clerk a copy of such resolution, and the county treasurer must collect said taxes as provided in this part.

(b) In cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

History: **En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R.C.M. 1921; amd. Sec. 1, Ch. 49, L. 1925; re-en. Sec. 5216, R.C.M. 1935; R.C.M. 1947, 84-4729.**

7-6-4408. Distribution of tax money. The council or commission in each city or town may distribute the tax money collected for general municipal or administrative purposes into the funds prescribed by ordinance.

History: **En. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R.C.M. 1921; Cal. Pol. C. Sec. 4371; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; re-en. Sec. 5194, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969; amd. Sec. 56, Ch. 566, L. 1977; R.C.M. 1947, 84-4701(part).**

7-6-4409. Determination of assessments. (1) The assessment made by the department of revenue or its agent for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

(2) It is the duty of the department or its agent, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within each county in the state.

History: **(1)En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R.C.M. 1921; re-en. Sec. 5205, R.C.M. 1935; amd. Sec. 92, Ch. 405, L. 1973; Sec. 84-4717, R.C.M. 1947; (2)En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R.C.M. 1921; re-en. Sec. 5206, R.C.M. 1935; amd. Sec. 93, Ch. 405, L. 1973; Sec. 84-4718, R.C.M. 1947; R.C.M. 1947, 84-4717, 84-4718.**

7-6-4410. Assessment book to be furnished to certain municipalities. (1) On or before the second Monday in July of each year, the department or its agent must furnish to all cities of the third class and towns within each county which shall make written request for the same on or before the first Monday in April of each year a complete certified copy of the assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

(2) The department may charge such cities and towns 5 cents per folio of 100 words for each copy of the assessment book furnished such cities and towns as provided in subsection (1).

History: **(1)En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R.C.M. 1921; re-en. Sec. 5207, R.C.M. 1935; amd. Sec. 94, Ch. 405, L. 1973; Sec. 84-4719, R.C.M. 1947; (2)En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R.C.M. 1921; re-en. Sec. 5208, R.C.M. 1935; amd. Sec. 95, Ch. 405, L. 1973; Sec. 84-4720, R.C.M. 1947; R.C.M. 1947, 84-4719, 84-4720.**

7-6-4411. Equalization of assessments. (1) The equalization of assessments of property made by the department of revenue applies to the assessment of property in any city or town and must be taken as the equalization thereof.

(2) The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: (1)En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R.C.M. 1921; re-en. Sec. 5209, R.C.M. 1935; amd. Sec. 96, Ch. 405, L. 1973; Sec. 84-4721, R.C.M. 1947; (2)En. Sec. 4866, Pol. C. 1895; re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 5210, R.C.M. 1921; re-en. Sec. 5210, R.C.M. 1935; R.C.M. 1947, 84-4721, 84-4722.

7-6-4412. Preparation of municipal assessment book. (1) It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment Book for the City of ...." and must contain a copy of the corrected assessment book of the county, as far as the same refers to city property.

(2) Such duplicate must be made in a book furnished by the city clerk of each city in the county and ruled in columns specifying the different funds, so that the city treasurer may extend the same and collect the taxes.

(3) The county clerk must deliver such duplicate assessment book to each city treasurer and take his receipt therefor, having attached thereto the affidavit similar to the one set out in 15-10-306.

History: (1)En. Sec. 4867, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3353, Rev. C. 1907; re-en. Sec. 5211, R.C.M. 1921; re-en. Sec. 5211, R.C.M. 1935; Sec. 84-4723, R.C.M. 1947; (2)En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R.C.M. 1921; re-en. Sec. 5212, R.C.M. 1935; Sec. 84-4724, R.C.M. 1947; (3)En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R.C.M. 1921; re-en. Sec. 5213, R.C.M. 1935; Sec. 84-4725, R.C.M. 1947; R.C.M. 1947, 84-4723, 84-4724, 84-4725.

7-6-4413. Collection of taxes. (1) Except in case of such cities of the first, second, and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book, the county treasurer of each county must collect the tax levied by all cities and towns in his respective county.

(2) The county treasurer must collect such city or town taxes, including unpaid road poll taxes, at the same time as the state and county taxes and with the same penalties and interest in case of delinquency.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part).

7-6-4414. Sales for delinquent taxes when county collects municipal tax. (1) All publications of sales for delinquent taxes shall include city or town taxes. There is only one sale for each piece of property. The sale shall cover the aggregate of city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law.

(2) All money received from sales and redemptions, after a deed is given by the county treasurer as provided by law, shall be credited to the state, county, and city or town pro rata in the same proportions as provided in 15-18-108.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; re-en. Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R.C.M. 1921; re-en. Sec. 5214, R.C.M. 1935; R.C.M. 1947, 84-4726(part); amd. Sec. 37, Ch. 252, L. 1979.

7-6-4415 through 7-6-4420 reserved.

7-6-4421. Authorization for tax levy and collection by municipality. (1) The council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county purposes and may by ordinance provide for the levy and collection of the same.

(2) Until the passage of such ordinance, the levy and collection of municipal taxes are and the proceedings for such purposes must be as provided in this part.

History: (1)En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R.C.M. 1921; re-en. Sec. 5203, R.C.M. 1935; amd. Sec. 90, Ch. 405, L. 1973; Sec. 84-4715, R.C.M. 1947; (2)En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R.C.M. 1921; re-en. Sec. 5204, R.C.M. 1935; amd. Sec. 91, Ch. 405, L. 1973; Sec. 84-4716, R.C.M. 1947; R.C.M. 1947, 84-4715, 84-4716.

7-6-4422. Authorization for collection of delinquent taxes by municipalities. (1) All cities in Montana which by ordinance provide for the collection of city taxes and assessments are hereby authorized and empowered to solicit payment, ask for, receive, and receipt for delinquent taxes and assessments due any such city.

(2) Upon receipt of payment for delinquent taxes and assessments by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated:

(a) the fact of such payment with the amount thereof;

(b) a description of the property charged with such delinquent taxes or assessments so paid; and

(c) the name of the person to whom the same were assessed.

(3) Nothing in this section is intended to or shall prevent the county treasurer of the county in which such city is situated from collecting such delinquent taxes or assessments, but this section is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933; re-en. Sec. 5215.2, R.C.M. 1935; R.C.M. 1947, 84-4728.

7-6-4423. Sales for delinquent taxes when municipality collects municipal tax. (1) (a) Whenever, in a city or town whose city treasurer or town clerk collects its own taxes or special assessments or both, any such taxes or assessments shall become delinquent, no tax sale shall be held therefor by such city treasurer or town clerk but such city treasurer or town clerk must, within 10 days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated.

(b) Such certificate shall contain:

(i) the description of each lot or parcel of land on which any tax or assessment has become delinquent;

(ii) the name and address of the person to whom assessed;

(iii) the date when the same became delinquent;

(iv) the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added.

(c) If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate; provided, however, that if the city or town council, by the adoption of an appropriate resolution, shall declare the whole of the assessment remaining unpaid to be delinquent as provided in 7-12-4181, then the whole of the assessment remaining unpaid shall be included in such certificate.

(2) Upon receipt of such certificate, the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments. There shall be but one sale for each piece of property. Such sale shall cover the aggregate of such city or town, county, and state taxes and special assessments, with the penalties, interest, and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927; re-en. Sec. 5215.1, R.C.M. 1935; R.C.M. 1947, 84-4727.

7-6-4424 through 7-6-4430 reserved.

7-6-4431. Authorization to exceed maximum mill levy — election required. The governing body of a municipality may raise money by taxation for the support of municipal government services, facilities, or other capital projects in excess of the levy or levies allowed by law under the following conditions:

(1) The governing body must pass a resolution indicating its intent to exceed the current statutory mill levy on the approval of a majority of the qualified electors voting in an election under subsection (2). The resolution must include:

(a) the specific purpose for which the additional money will be used;
(b) the specific dollar amount to be raised;
(c) the approximate number of mills required; and
(d) the specific mill levy limitation to be exceeded.

(2) The governing body must submit the question of the additional mill levy to the qualified electors of the municipality at the next regular primary or general election on either odd-numbered or even-numbered years. The question may not be submitted more than once in any calendar year. If the majority voting on the question are in favor of the additional levy or levies, the governing body is authorized to exceed the statutory mill levy limit in the amount specified in the resolution for a period not to exceed 2 years.

History: Ap. p. Sec. 1, Ch. 12, L. 1919; re-en. Sec. 5195, R.C.M. 1921; re-en. Sec. 5195, R.C.M. 1935; Sec. 84-4706, R.C.M. 1947; Ap. p. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; Sec. 84-4709, R.C.M. 1947; R.C.M. 1947, 84-4706, 84-4709(part); amd. Sec. 38, Ch. 252, L. 1979; amd. Sec. 1, Ch. 614, L. 1979.

7-6-4432. Purpose of additional mill levy to be stated. The submission of the question shall expressly state the purpose for which the additional levy is to be made.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 2, Ch. 614, L. 1979.

7-6-4433. Repealed. Sec. 42, Ch. 252, L. 1979; Sec. 407, Ch. 571, L. 1979; Sec. 8, Ch. 614, L. 1979.

7-6-4434. Notice of election on question of additional mill levy. Where the question of making an additional levy is submitted to the qualified electors, notice shall be given as provided for in 13-1-108.

History: En. Sec. 2, Ch. 12, L. 1919; re-en. Sec. 5196, R.C.M. 1921; re-en. Sec. 5196, R.C.M. 1935; R.C.M. 1947, 84-4707; amd. Sec. 305, Ch. 571, L. 1979; amd. Sec. 3, Ch. 614, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 614, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Ch. 571 was a general revision of the election laws and the amendment to this section provided a specific internal reference to the notice provisions. For consistency with other election statutes, the specific language of Ch. 571 was selected for use in the composite, rather than the general reference provided in Ch. 614.

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-6-4435. Repealed. Sec. 407, Ch. 571, L. 1979.

7-6-4436. Conduct of election. The election will be conducted as provided by Title 13.

History: En. Sec. 4, Ch. 12, L. 1919; re-en. Sec. 5198, R.C.M. 1921; re-en. Sec. 5198, R.C.M. 1935; R.C.M. 1947, 84-4709(part); amd. Sec. 306, Ch. 571, L. 1979; amd. Sec. 5, Ch. 614, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 571 and Ch. 614, L. 1979, and a composite section has been prepared by the Code Commissioner, 1979. Ch. 571 was a general revision of the election laws, and the language of Ch. 571 has been retained in the composite to achieve consistency with other election statutes.

7-6-4437. Use of proceeds from additional mill levy. (1) Except as provided in subsection (2), if authorized, the money raised by the additional levy shall be used only for that specific purpose provided for in 7-6-4432.

(2) If any balance remains on hand after the purpose for which the levy was made has been accomplished, the balance may by vote of the governing body be transferred to any other fund of the municipality.

History: En. Sec. 3, Ch. 12, L. 1919; re-en. Sec. 5197, R.C.M. 1921; re-en. Sec. 5197, R.C.M. 1935; R.C.M. 1947, 84-4708(part); amd. Sec. 6, Ch. 614, L. 1979.

7-6-4438. Tax levy and expenditures for municipal and administrative purposes when limits on municipal indebtedness exceeded. (1) All taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals or exceeds the limit allowed by statute may be used in payment of current expenses during the fiscal year for which the taxes were levied, as if a special levy had been made for each of the purposes. The council of any such city or town may designate the amount of the general levy applicable to each of the purposes. The amount so designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses shall be payable out of the fund and not otherwise.

(2) However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed 1.5% annually of the taxable value of all property subject to taxation in the city or town.

(3) Any city, the indebtedness of which equals or exceeds the limit allowed by statute, may levy and collect special taxes for municipal and administrative purposes, and the city council in making special levies shall

designate the amount thereof for each of the purposes, and each tax, when collected, constitutes a fund out of which the expenses incurred for the purpose for which the tax was levied shall be paid. The expenses incurred for any particular purpose shall be paid out of the fund provided therefor and not otherwise.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1903; amd. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R.C.M. 1921; amd. Sec. 2, Ch. 175, L. 1925; re-en. Sec. 5201, R.C.M. 1935; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973; amd. Sec. 58, Ch. 566, L. 1977; Sec. 84-4713, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R.C.M. 1921; re-en. Sec. 5202, R.C.M. 1935; Sec. 84-4714, R.C.M. 1947; R.C.M. 1947, 84-4713, 84-4714; amd. Sec. 39, Ch. 252, L. 1979.

7-6-4439. Emergency provisions not affected. Nothing in 7-6-4431 through 7-6-4437 shall affect the emergency expenditures provided by law.

History: En. Sec. 7, Ch. 614, L. 1979.

7-6-4440 through 7-6-4450 reserved.

7-6-4451. All-purpose mill levy authorized. It is the purpose of 7-6-4451 through 7-6-4455 to authorize and empower the cities and towns of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of Montana.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.1(part).

7-6-4452. Maximum all-purpose mill levy. Except as provided elsewhere, the cities and towns of the state of Montana may make an all-purpose annual levy upon the taxable value of all the property in the cities and towns subject to taxation for municipal purposes in lieu of the multiple levies now authorized by statute. The total of the all-purpose levy may not exceed 65 mills on the dollar.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; R.C.M. 1947, 84-4701.2(part).

7-6-4453. Certain special mill levies also available. (1) The all-purpose mill levy shall not and may not include the levies imposed for bonded indebtedness, to pay judgments, or for special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 shall not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in 7-6-4451 through 7-6-4455.

History: Ap. p. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971; Sec. 84-4701.1, R.C.M. 1947; Ap. p. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971; Sec. 84-4701.6, R.C.M. 1947; Ap. p. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971; amd. Sec. 57, Ch. 566, L. 1977; Sec. 84-4701.2, R.C.M. 1947; R.C.M. 1947, 84-4701.1(part), 84-4701.2(part), 84-4701.6.

7-6-4454. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971; R.C.M. 1947, 84-4701.5.

7-6-4455. Changes from all-purpose levy method. Any municipality electing to follow the all-purpose levy method provided for in 7-6-4452 shall be bound by that election during the ensuing fiscal year but may abandon such method in succeeding fiscal years.

History: En. Sec. 4, Ch. 82, L. 1965; R.C.M. 1947, 84-4701.4.

Part 45

Municipal Warrants

7-6-4501. Interest on unpaid warrants. When any warrant drawn upon the treasury of a city or town and pursuant to any ordinance or resolution or direction of the council of the city or town is presented to the city treasurer or town clerk for payment and the same is not paid for want of funds, the city treasurer or town clerk must endorse thereon "Not paid for want of funds", annexing the date of presentation, and signing his name thereto. From that time until the warrant is called for payment, the warrant bears interest at a rate fixed by ordinance.

History: En. Sec. 1, p. 75, L. 1897; re-en. Sec. 3284, Rev. C. 1907; re-en. Sec. 5081, R.C.M. 1921; re-en. Sec. 5081, R.C.M. 1935; amd. Sec. 12, Ch. 234, L. 1971; R.C.M. 1947, 11-1307; amd. Sec. 40, Ch. 252, L. 1979.

7-6-4502. Call for payment of warrants drawing interest. (1) When there is money in the city or town treasury applicable to the payment of any warrants drawing interest and sufficient to pay the same, the city treasurer or town clerk must give notice in some newspaper published in such city or town or, if none is published therein, then by written notice posted in a conspicuous place on the outer door of the office of the city treasurer or town clerk, stating that he is ready to pay the said warrants and giving the number of the warrants to be paid.

(2) The warrants so called shall cease to draw interest from the time of the first publication or posting of such notice.

History: En. Sec. 2, p. 75, L. 1897; re-en. Sec. 3285, Rev. C. 1907; re-en. Sec. 5082, R.C.M. 1921; re-en. Sec. 5082, R.C.M. 1935; R.C.M. 1947, 11-1308.

7-6-4503. Registration of warrants. Upon the presentation of any warrant endorsed as specified in 7-6-4501, it shall be the duty of the city treasurer or town clerk to record, in a book to be provided for that purpose, the warrant, the date of such presentation, the number and date of the warrant, to whom payable, the fund on which drawn, and the amount thereof.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).

7-6-4504. Order of redemption of warrants. All warrants to be redeemed as provided for in 7-6-4502 shall be redeemed in the order of their registration, beginning with the date of the warrant first so registered.

History: En. Sec. 3, p. 76, L. 1897; re-en. Sec. 3286, Rev. C. 1907; re-en. Sec. 5083, R.C.M. 1921; re-en. Sec. 5083, R.C.M. 1935; R.C.M. 1947, 11-1309(part).

Part 46

Deposit and Investment of Municipal Money

7-6-4601. Deposit of public money. It shall be the duty of the city treasurer or town clerk, whichever is appropriate, to deposit all public money in his possession and under his control, except such as may be required for current business, in any solvent bank or banks located in such city or town and subject to national supervision or state examination, as the council shall designate, and no other.

History: Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part).

7-6-4602. Interest rate on deposited public money. Public money deposited pursuant to 7-6-4601 shall bear interest at the rate of 2 ½% per annum, payable quarter-annually.

History: Ap. p. 11-805.1 by Sec. 4, Ch. 146, L. 1974; Sec. 11-805.1, R.C.M. 1947; Ap. p. Sec. 4788, Pol. C. 1895; re-en. Sec. 3257, Rev. C. 1907; amd. Sec. 2, Ch. 88, L. 1913; re-en. Sec. 5034, R.C.M. 1921; Cal. Pol. C. Sec. 4392; re-en. Sec. 5034, R.C.M. 1935; Sec. 11-807, R.C.M. 1947; R.C.M. 1947, 11-805.1(part), 11-807(part).

7-6-4603. Investment of municipal money in city or town warrants. (1) Except as provided in 7-7-4102, whenever the city or town has, under its control and in any fund, any money for which there is no immediate demand and which, in the judgment of the city or town council, it would be advantageous to invest in city or town warrants, the city or town council may direct the city treasurer or town clerk to purchase legally issued city or town general obligation warrants of the same city or town thereafter issued against funds in which there is not sufficient funds to pay such city or town warrants at the time of issuance.

(2) (a) In case of such purchase, the city or town council shall designate the fund or funds to be invested and shall fix the amount thereof and shall also designate the city or town warrants which are to be purchased by such funds. The city or town clerk shall thereupon cause to be attached to or stamped, written, or printed upon the warrants ordered to be purchased a notice to the effect that the city or town will exercise its preference right to purchase such warrant.

(b) The city treasurer or town clerk shall thereafter, when such city or town warrant is presented to him, purchase the same out of the proper fund as designated by the city or town council. The warrant so purchased shall be registered as other city or town warrants and bear interest as provided by law.

(3) When the designated amounts have been invested, the city treasurer shall notify the city clerk.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(1); amd. Sec. 41, Ch. 252, L. 1979.

CHAPTER 7

DEBT MANAGEMENT

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Section

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Part 1

General Provisions Related to Local Governments

7-7-101. Submission of local government general obligation bond proceedings to attorney general for review. The governing body of any county, city, or town shall submit a certified copy of all proceedings preliminary to the issue of general obligation bonds to the attorney general, together with such other proceedings, certificates, and records as he may require, and request his report as to validity.

History: En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.

7-7-102. Reason for review by attorney general. Sections 7-7-101 through 7-7-104 are intended to improve the marketability of general obligation bonds issued by counties, cities, or towns in order that these bonds may be sold upon the most favorable terms.

History: En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.

7-7-103. Review by attorney general — report. (1) The attorney general shall examine certified copies of all proceedings preliminary to the issuance of general obligation bonds by any county, city, or town which are submitted to him for such examination, and if the proceedings are found to be regular and valid, he shall deliver to the recording officer of the local government a report of his examination and determination.

(2) A certified copy of the report shall be filed with the officer required by law to register the bonds, and a notation thereof shall be entered in the bond register.

History: En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979.

7-7-104. Limitation on action to test bond validity. No local government general obligation bond of any issue, whereof the preliminary proceedings have been submitted to and approved by the attorney general, may be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity thereof is brought within 30 days after the date of sale.

History: En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979.

7-7-105. Challenges to local government bond elections. (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

History: (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

7-7-106. Hearing and determination on challenge. (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where he last resided.

(3) The court shall meet at the time and place designated to determine the contested election and shall have all the powers necessary to the determination thereof.

(4) The court shall be governed by the rules of law and evidence governing the determination of questions of law and fact so far as the same may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission thereof, the court shall file its findings of fact and conclusions of law and shall immediately pronounce

judgment in the premises, either confirming or annulling and setting aside the election. The judgment shall be entered immediately thereafter.

History: **En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202.**

7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, no city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed 27% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: **En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part).**

7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both such purposes may not in the aggregate exceed 10% over and above the 27% referred to in 7-7-107 of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

History: **En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part).**

7-7-109. Sale of notes in anticipation of federal or state revenue. (1) As used in this section, the following definitions apply:

(a) "Bonds" means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) "Political subdivision" means a county, city, town, school district, irrigation district, special improvement district, or any other political subdivision of the state, but does not include the state or any board, agency, or commission of the state.

(c) "Governing body" means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(2) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law and the political subdivision has applied for a grant or loan of state or

federal funds to aid in payment of costs incurred or to be incurred for the authorized purpose, its governing body may by resolution issue and sell notes in anticipation of the receipt of the grant or loan, in an amount not exceeding the total amount of bonds authorized and maturing within not more than 3 years from the date such notes are issued.

(3) The proceeds of the grant or loan, when received, shall be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) Any amount of the notes which cannot be paid at maturity from the proceeds of the grant or loan or from any other funds appropriated by the governing body for the purpose shall be paid from the proceeds of bonds to be issued and sold before the maturity date, or if sufficient funds are not available for payment in full of the notes at maturity, those bondholders may require the issuance, in exchange, of bonds bearing interest at the maximum rate permitted by law. The bonds so issued are secured and subject to the terms and conditions provided by the law authorizing their issuance. Notes and bonds may be issued as provided in this section regardless of the amount authorized if the amount which may legally be issued is less than the commitment for which the grant or loan is made. Before the notes or bonds are issued, the political subdivision must receive a written commitment for a grant or loan in an amount equal to the remaining estimated costs and must by resolution provide for the fulfillment of the conditions of the commitment.

History: En. Secs. 1, 2, Ch. 181, L. 1979.

7-7-110 through 7-7-120 reserved.

7-7-121. Misconduct in relation to bond funds. (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

History: (1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).

7-7-122. Prosecution for misconduct. It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

History: En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

7-7-123. Investment of sinking funds of local governments. (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as is not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities which are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants. All those investments must first be approved by the department of community affairs.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested shall be kept in the custody of the county or city treasurer or town clerk and held by him for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section shall be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979.

7-7-124. Limitation on investment of sinking funds. If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

History: En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.

Parts 2 through 20 reserved

Part 21

General Provisions Related to Counties

7-7-2101. Limitation on amount of county indebtedness. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 18% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $40,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

History: **En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part).**

7-7-2102. Effect of exceeding limits on indebtedness. All bonds or obligations in excess of such amount given by or on behalf of the county are void.

History: **En. Sec. 4196, Pol. C. 1895; re-en. Sec. 2876, Rev. C. 1907; re-en. Sec. 4447, R.C.M. 1921; re-en. Sec. 4447, R.C.M. 1935; amd. Sec. 1, Ch. 486, L. 1973; amd. Sec. 1, Ch. 19, L. 1975; amd. Sec. 35, Ch. 566, L. 1977; R.C.M. 1947, 16-807(part).**

7-7-2103. Restriction on use of county credit by private persons. No county must ever give or loan its credit in aid of or make any donation or grant, by subsidy or otherwise, to any individual, association, or corporation or become a subscriber to or a shareholder in any company or corporation or a joint owner with any person, company, or corporation.

History: **En. Sec. 4194, Pol. C. 1895; re-en. Sec. 2874, Rev. C. 1907; re-en. Sec. 4445, R.C.M. 1921; Cal. Pol. C. Sec. 4004; re-en. Sec. 4445, R.C.M. 1935; R.C.M. 1947, 16-805.**

7-7-2104. Replacement of lost bond, warrant, or coupon. (1) The board may issue a duplicate warrant, bond, or coupon whenever any warrant, bond, or coupon drawn by it upon the treasury of the county is lost or destroyed. The duplicate warrant, bond, or coupon must be in the same form as the original and will take the place in order of registration and payment of and supersede the original bond, warrant, or coupon. It must have the word "duplicate" plainly printed across its face.

(2) No duplicate warrant, bond, or coupon may be issued under this section unless the person entitled to receive the duplicate deposits with the county treasurer a bond in double the amount for which the duplicate warrant, bond, or coupon is issued, conditioned to render the county and its officers harmless from all loss, costs, or damages by reason of issuing the duplicate.

(3) No bond of indemnity is required:

(a) when a payee is the state of Montana or any agency, instrumentality, or officer of the state;

(b) when the owner or custodian is the state or any agency or officer thereof;

(c) when the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the state;

(d) when it can be established that a crime has been committed and that as a result of such crime a county warrant, bond, or coupon has been stolen or destroyed; or

(e) when it can be established that a county warrant, bond, or coupon has been mailed to an incorrect payee.

(4) If the owner or custodian applies under the provisions of subsection (3)(d) or (3)(e), a stop-payment order shall be placed on the original warrant, bond, or coupon by the county treasurer.

(5) If the owner or custodian applies under the provisions of subsection (3)(c), (3)(d), or (3)(e), the application shall include an agreement to indemnify and hold the county or its officers and employees harmless from any loss resulting from the issuance of a duplicate warrant, bond, or coupon. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Secs. 1, 3, 4, p. 83, L. 1881; re-en. Secs. 4251, 4253, 4254, Pol. C. 1895; re-en. Secs. 2916, 2918, 2919, Rev. C. 1907; re-en. Secs. 4626, 4628, 4629, R.C.M. 1921; re-en. Secs. 4626, 4628, 4629, R.C.M. 1935; R.C.M. 1947, 16-2003, 16-2005, 16-2006; amd. Sec. 1, Ch. 110, L. 1979.

7-7-2105. Repealed. Sec. 3, Ch. 110, L. 1979.

7-7-2106. Procedure if original bond, warrant, or coupon is presented. It is the duty of the county treasurer, upon the production to him of any original bond, warrant, or coupon by the lawful owner or holder thereof, to assign by endorsement and to deliver to him the surety bond mentioned in 7-7-2104. Such owner or holder may maintain an action in his own name upon such surety bond for the recovery of any money paid upon such duplicate, but the delivery of such surety bond does not relieve or exonerate the county from the payment of the amount specified therein upon a demand and refusal of the sureties named in the indemnifying surety bond to pay the same.

History: En. Sec. 5, p. 83, L. 1881; re-en. Sec. 4255, Pol. C. 1895; re-en. Sec. 2920, Rev. C. 1907; re-en. Sec. 4630, R.C.M. 1921; re-en. Sec. 4630, R.C.M. 1935; R.C.M. 1947, 16-2007; amd. Sec. 2, Ch. 110, L. 1979.

7-7-2107 through 7-7-2110 reserved.

7-7-2111. Authorization to issue construction bonds. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to issue on the credit of the county coupon bonds to an amount sufficient to secure the necessary funds for the procurement of necessary building sites, for the construction of necessary public buildings, and for the construction of bridges and highways, in accordance with the provisions of the code.

History: En. Subd. 27, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.26, R.C.M. 1935; R.C.M. 1947, 16-1029.

7-7-2112. Investment of certain construction bond proceeds. (1) Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

History: En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part).

Part 22

County General Obligation Bonds

7-7-2201. Purposes for which general obligation bonds of a county may be issued. The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for any of the following purposes:

(1) acquiring land for sites and grounds for a public building or buildings of any kind within the county and under its control, which the county has lawful authority to acquire or erect, control, and maintain;

(2) acquiring land for any other public use or activity within the county, under its control and authorized by law;

(3) constructing, erecting, or acquiring by purchase necessary public buildings within the county, under its control and authorized by law; making additions to and repairing buildings; and furnishing and equipping the same;

(4) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(5) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of any county boundary line;

(6) funding, paying, and retiring outstanding county warrants lawfully issued against the county general fund, road fund, bridge fund, or poor fund when:

(a) there is not sufficient money in the fund against which such warrants are drawn to pay and retire such warrants; and

(b) the levying of taxes sufficient to pay and retire such warrants within a period of 3 years would, in the judgment of the board, work a hardship and be an undue burden upon the taxpayers of the county.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).

7-7-2202. Authority to issue general obligation bonds to satisfy judgments. (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part, for the purpose of funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction when:

(a) there are not sufficient funds available to pay such judgment; and

(b) sufficient money cannot be raised to satisfy such judgment by an annual tax levy of 10 mills levied on all the taxable property within the county through a period of 3 years.

(2) The resolution providing for the issue of such bonds must recite the facts concerning the judgment to be funded and the terms of any compromise agreement which may have been entered into between the board and the judgment creditor.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).

7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) and (3), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 9% of the taxable value of the property therein, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants, will exceed 9% but will not exceed 29% of the taxable value of such property, when necessary to do so, for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) The foregoing limitation shall not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part); amd. Sec. 1, Ch. 332, L. 1979; amd. Sec. 1, Ch. 617, L. 1979.

Compiler's Comments

Effective date. Sec. 3, Ch. 332, L. 1979, provided: "This act is effective on passage and approval." Approved March 27, 1979.

7-7-2204. Effect of issuing bonds in excess of limitations on amount. All bonds issued by any county in excess of the limitations fixed in 7-7-2203 shall be null and void.

History: En. Sec. 3, Ch. 188, L. 1931; amd. Sec. 1, Ch. 115, L. 1933; re-en. Sec. 4630.3, R.C.M. 1935; amd. Sec. 2, Ch. 135, L. 1937; amd. Sec. 12-103, Ch. 197, L. 1965; amd. Sec. 6, Ch. 100, L. 1973; amd. Sec. 6, Ch. 391, L. 1973; R.C.M. 1947, 16-2010(part).

7-7-2205. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the county issuing the same, and the full faith and credit of such county are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 23, Ch. 188, L. 1931; re-en. Sec. 4630.23, R.C.M. 1935; R.C.M. 1947, 16-2037.

7-7-2206. Term of general obligation bonds. (1) No bonds issued for any of the purposes designated in 7-7-2201(1) through (4) shall be for a longer term than 20 years.

(2) No bonds issued for any of the purposes designated in 7-7-2201(5) and (6) shall be for a longer term than 10 years.

(3) Bonds issued for any of the purposes designated in 7-7-2202 shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed 20 years.

(4) The length of the term required shall be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county must from year to year make a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2207. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the county on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so stated on the face of the bonds.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2208. Bond interest rate. The maximum rate of interest which any of such bonds may bear shall be 7% per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2209. Types of bonds. All bonds hereafter issued by any county shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds, otherwise serial bonds may be issued.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2210. Amortization bonds. The term “amortization bonds”, as used in this part, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2211. Serial bonds. The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in equal annual installments, one installment consisting of one or more bonds, becoming due and payable each year (the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run), so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the installments becoming due and payable the first year or the first and second years may vary in amount from the others to the extent resulting from fixing the amount of each bond of the other installments at $100, $500, or $1,000, as may be determined by the board of county commissioners.

History: En. Sec. 5, Ch. 188, L. 1931; re-en. Sec. 4630.5, R.C.M. 1935; amd. Sec. 1, Ch. 112, L. 1961; R.C.M. 1947, 16-2012(part).

7-7-2212 through 7-7-2220 reserved.

7-7-2221. Issuance of certain general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) enabling a county to liquidate its indebtedness to another county incident to the creation of a new county or the changing of a county boundary line, as set forth in 7-7-2201(5); and

(2) funding, paying in full, or compromising, settling, and satisfying any judgment which may have been rendered against the county in a court of competent jurisdiction, as set forth in 7-7-2202.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2222. Procedure to issue bonds without election. (1) In order to issue bonds for any of the purposes referred to in 7-7-2221 and 7-7-2311, it shall only be necessary for the board of county commissioners, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts in regard to the indebtedness to be paid or bonds to be refunded, showing the reason for issuing such bonds and fixing and determining the details thereof, and give notice of the sale thereof in the same manner that notice is required to be given of the sale of bonds authorized at an election and to then follow the procedure prescribed in this part for the sale and issuance of such bonds.

(2) All bonds sold without submitting the question of their issue to an election, as authorized in 7-7-2221 and 7-7-2311, shall be sold at open competitive bidding, but all sealed and written bids submitted for the purchase of such bonds shall be considered the same as open bids.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2223. Petition and election required for issuance of certain bonds. (1) County bonds for any purpose other than those enumerated in

7-7-2221 and 7-7-2311 may not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds is submitted to the registered electors of the county and approved as provided in 7-7-2237.

(2) No bond election may be called unless the board of county commissioners receives a petition, delivered and certified by the election administrator, asking that such election be held and the question be submitted. The petition must be signed by at least 20% of the registered electors of the county.

History: En. Secs. 7, 8, Ch. 188, L. 1931; re-en. Secs. 4630.7, 4630.8, R.C.M. 1935; amd. Secs. 12, 13, Ch. 158, L. 1971; amd. Secs. 1, 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(1), 16-2022(part); amd. Sec. 307, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-7-2224. Form and contents of petition. (1) Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in the petition.

(2) The petition shall be in the form provided in Title 13, chapter 27.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 308, Ch. 571, L. 1979.

7-7-2225. Filing of petition with election administrator — certificate. (1) The completed petition shall be filed with the election administrator. The election administrator shall, within 15 days thereafter, carefully examine the petition and the county records showing the qualifications of the petitioners and attach a certificate, under his official signature and the seal of his office.

(2) The certificate shall set forth:

(a) the total number of individuals who are registered electors;

(b) which and how many of the individuals whose names are subscribed to the petiton possess all of the qualifications required of signers of such a petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county.

History: En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; R.C.M. 1947, 16-2022(part); amd. Sec. 309, Ch. 571, L. 1979.

7-7-2226. Delivery of certified petition to board of county commissioners. (1) After completing the certificate required by 7-7-2225, the election administrator shall deliver the certified petition to the board of county commissioners.

(2) When the petition has been filed with the election administrator and he has found that it has a sufficient number of signers qualified to sign it,

he shall place it before the board at its first meeting held after he has attached his certificate thereto.

History: (1)En. Sec. 8, Ch. 188, L. 1931; re-en. Sec. 4630.8, R.C.M. 1935; amd. Sec. 13, Ch. 158, L. 1971; amd. Sec. 2, Ch. 347, L. 1977; Sec. 16-2022, R.C.M. 1947; (2)En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; Sec. 16-2023, R.C.M. 1947; R.C.M. 1947, 16-2022(3), 16-2023(part); amd. Sec. 310, Ch. 571, L. 1979.

7-7-2227. Examination of petition — resolution calling for election. (1) Upon delivery of the certified petition, the board shall carefully examine the petition and make such other investigation as it may consider necessary. If it is found that the petition is in proper form, bears the requisite number of signers of qualified petitioners, and is in all other respects sufficient, the board shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the essential facts in regard to the petition and its filing and presentation and the purpose or purposes for which the bonds are proposed to be issued;

(b) fix the exact amount of bonds proposed to be issued for each purpose, which amount may be less than but must not exceed the amount set forth in the petition;

(c) determine the number of years through which such bonds are to be paid, not exceeding the limitations fixed in 7-7-2206; and

(d) make provision for having the question submitted to the registered electors of the county at the next general election or at a special election which the board may call for that purpose.

History: En. Sec. 9, Ch. 188, L. 1931; re-en. Sec. 4630.9, R.C.M. 1935; R.C.M. 1947, 16-2023(part); amd. Sec. 311, Ch. 571, L. 1979.

7-7-2228. Time of holding election on question of issuing bonds. The bond election required by 7-7-2223 may not be held any sooner than 90 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 90-day period.

History: En. Sec. 7, Ch. 188, L. 1931; re-en. Sec. 4630.7, R.C.M. 1935; amd. Sec. 12, Ch. 158, L. 1971; amd. Sec. 1, Ch. 347, L. 1977; R.C.M. 1947, 16-2021(2); amd. Sec. 312, Ch. 571, L. 1979.

7-7-2229. Notice of election. (1) Whether such election is held at the general election or at a special election, separate notice shall be given thereof.

(2) (a) The notice shall state:

(i) the date when the election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose of the issue;

(v) the term of years through which the bonds are to be paid; and

(vi) such other information regarding the holding of the election and the bonds proposed to be issued as the board may consider proper.

(b) If bonds are to be issued for two or more purposes, each purpose and the amount therefor must be separately stated.

(3) The notice shall be published as provided in 13-1-108.

History: En. Sec. 10, Ch. 188, L. 1931; re-en. Sec. 4630.10, R.C.M. 1935; R.C.M. 1947, 16-2024(part); amd. Sec. 313, Ch. 571, L. 1979.

7-7-2230 through 7-7-2236. Repealed. Sec. 407, Ch. 571, L. 1979.

7-7-2237. Percentage of electors required to authorize bond issue. (1) Whenever the question of issuing county bonds for any purpose is submitted to the registered electors of a county at either a general or special election, not less than 40% of the registered electors entitled to vote on the question must vote thereon; otherwise, the proposition shall be considered to have been rejected.

(2) If 40% or more of the registered electors do vote on the question at the election and a majority of the votes shall be cast in favor of the proposition, then the proposition shall be considered to have been approved and adopted.

History: En. Sec. 13, Ch. 188, L. 1931; re-en. Sec. 4630.13, R.C.M. 1935; R.C.M. 1947, 16-2027; amd. Sec. 314, Ch. 571, L. 1979.

7-7-2238. Resolution to issue bonds. (1) If it is found that at the bonding election 40% or more of the qualified electors entitled to vote at such election voted on such question and that a majority of such votes were cast in favor of the issuing of such bonds, the board of county commissioners shall, at a regular or special meeting held within 30 days thereafter, pass and adopt a resolution providing for the issuance of such bonds.

(2) Such resolution shall recite:

(a) the purpose for which such bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they shall be payable; and

(f) the optional provisions, if any.

(3) Such resolution shall provide for the manner of the execution of the bonds. It shall provide that preference shall be given amortization bonds, but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The board may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2239. Rescission of resolution authorizing bond issue. If none of said bonds have been sold and issued within 3 years from the date of the bonding election and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds by the passage and adoption of a resolution wherein is recited the reason for such rescission of authority.

History: En. Sec. 14, Ch. 188, L. 1931; re-en. Sec. 4630.14, R.C.M. 1935; amd. Sec. 1, Ch. 210, L. 1961; R.C.M. 1947, 16-2028(part).

7-7-2240 through 7-7-2250 reserved.

7-7-2251. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19.., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the said county in the total amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the said board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of the said serial bonds will become payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all of such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 6% per annum, payable semiannually, on the .... day of .... (month) and .... (month) in each year, and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that he shall fail or refuse to complete the purchase of the bonds in accordance with the terms of his bid.

All bids should be addressed to the board of county commissioners of said county and delivered to the county clerk of said county.

ATTEST:

....
(Chairman, Board of County Commissioners)
of .... County
State of Montana

....
(Clerk of the Board of County Commissioners)
of .... County, Montana
Address ...., Montana

History: **En. Sec. 15, Ch. 188, L. 1931; re-en. Sec. 4630.15, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2029.**

7-7-2252. Publication of notice of sale. The board of county commissioners shall cause such notice to be published in the official newspaper of the county once each week for 4 successive weeks immediately preceding the date of sale. The board may in its discretion cause such notice to be published in some financial newspaper published in the city of New York or in the city of Chicago or in financial newspapers published in each of said cities.

History: En. Sec. 16, Ch. 188, L. 1931; re-en. Sec. 4630.16, R.C.M. 1935; R.C.M. 1947, 16-2030.

7-7-2253. Notice of sale and other information to be supplied to board of investments. At the same time the notice is sent to the official newspaper of the county for publication, the county clerk shall send a copy of the notice to the board of investments and shall furnish to the board of investments a transcript of the proceedings had for the issuance of bonds and any other information relating thereto as the board of investments may find necessary.

History: En. Sec. 17, Ch. 188, L. 1931; re-en. Sec. 4630.17, R.C.M. 1935; amd. Sec. 3, Ch. 326, L. 1974; R.C.M. 1947, 16-2031.

7-7-2254. Procedure for sale of bonds. (1) The board of county commissioners shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the board shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the county. The board shall accept the bid which they shall judge most advantageous to the county. The board is authorized to reject any or all bids and to sell the bonds at private sale if they deem it for the best interests of the county; provided, however, that such bonds shall not be sold at less than par and accrued interest to date of delivery.

(3) No attorneys' fees or brokerage or other fees or commissions of any kind shall be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof.

History: En. Sec. 18, Ch. 188, L. 1931; re-en. Sec. 4630.18, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1971; R.C.M. 1947, 16-2032.

7-7-2255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held thereafter, the board of county commissioners shall prescribe the form of the bonds, whether amortization bonds or serial bonds, and of the coupons to be attached thereto.

(2) Each and every county bond and every coupon attached thereto must be signed by the chairman of the board of county commissioners and the county treasurer and attested by the county clerk. Each bond shall have the county seal affixed thereto.

History: En. Sec. 19, Ch. 188, L. 1931; re-en. Sec. 4630.19, R.C.M. 1935; amd. Sec. 8, Ch. 260, L. 1959; R.C.M. 1947, 16-2033.

7-7-2256. Printing of bonds. (1) Except as provided in subsection (2), the county clerk, under the direction of the board, shall cause the bonds, with coupons attached thereto, to be printed or lithographed at the expense of the county at lowest commercial rates.

(2) A purchaser of such bonds may furnish the same to the county for execution if the same is done at his own expense and without expense to the county.

History: En. Sec. 20, Ch. 188, L. 1931; re-en. Sec. 4630.20, R.C.M. 1935; R.C.M. 1947, 16-2034.

7-7-2257. Registration of bonds. (1) When duly executed by the officers of the county as herein provided, the bonds shall be registered by the county treasurer in a book provided for that purpose before being delivered to the purchaser.

(2) Such registration shall show:

(a) the number and amount of each bond;

(b) the date of issue, date redeemable, and date when the same becomes due;

(c) the amount of all payments of both principal and interest required to be made on each bond with the dates when the same are required to be paid; and

(d) the name and address of the purchaser.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part).

7-7-2258. Copy of bond to be kept by county treasurer. The county clerk shall also deliver to the county treasurer an unsigned and canceled printed copy of a bond of each issue, as so issued and registered, to be preserved in his office.

History: En. Sec. 21, Ch. 188, L. 1931; re-en. Sec. 4630.21, R.C.M. 1935; R.C.M. 1947, 16-2035(part).

7-7-2259. Delivery of bonds. (1) If the board of investments is the purchaser of the bonds, the county treasurer shall forward the registered bonds to the department of administration. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the county treasurer shall deliver the bonds to the purchaser upon receiving full payment therefor.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the county treasurer and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 22, Ch. 188, L. 1931; re-en. Sec. 4630.22, R.C.M. 1935; amd. Sec. 4, Ch. 326, L. 1974; R.C.M. 1947, 16-2036(part).

7-7-2261. Maintenance of accounts for bond issues. (1) The county treasurer of each county shall keep in his books a special and separate sinking fund account for each series or issue of outstanding bonds issued by his county. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on county bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-2270.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part); amd. Sec. 3, Ch. 256, L. 1979.

7-7-2262. Payment of principal and interest. The county treasurer shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where said bonds are payable, upon the presentation and surrender of the coupon or coupons or bond or bonds to be paid. If the bonds are held by the state of Montana, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the county treasurer, together with his receipt.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2263. Interest on late payments of principal and interest on bonds held by state. Any and all installments of interest or principal on bonds held by the state and not promptly paid at the office of the state treasurer when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 28, Ch. 188, L. 1931; re-en. Sec. 4630.28, R.C.M. 1935; R.C.M. 1947, 16-2042(part).

7-7-2264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any county has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the county treasurer of such county shall, between the first and fifth days of August in each year while such bonds or any thereof remain outstanding and unpaid, make out and deliver to the board of county commissioners of such county a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds will become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-2265.

History: En. Sec. 24, Ch. 188, L. 1931; re-en. Sec. 4630.24, R.C.M. 1935; R.C.M. 1947, 16-2038.

7-7-2265. Tax levy for payment of bonds. (1) The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax upon all taxable property in the county for the payment of interest on and principal of each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from such levy for any other series or issue of bonds.

(2) The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of such bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided by 7-7-2264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal thereof when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which such series or issue of bonds were originally issued by the number of years for which the same were originally issued to run.

History: En. Sec. 25, Ch. 188, L. 1931; re-en. Sec. 4630.25, R.C.M. 1935; R.C.M. 1947, 16-2039.

7-7-2266. Procedure in case of insufficient tax levy — individual liability of county commissioners. (1) If the board of county commissioners of any county shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-2265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such county may apply to the district court of the county issuing such bonds for a writ of mandate to compel the board of such county to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the board has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-2265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring such board, at the next meeting thereof for the purpose of making and fixing county levies, to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petitioner in any such proceeding shall be paid by the members of the board and shall not be a charge against such county.

History: En. Sec. 26, Ch. 188, L. 1931; re-en. Sec. 4630.26, R.C.M. 1935; R.C.M. 1947, 16-2040.

7-7-2267. Redemption of bonds held by state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs and whenever such bonds are held by the state of Montana, the county treasurer must apply such available money in payment of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay.

(2) Not less than 15 days before the next interest payment date, the county treasurer must give notice to the board of investments that on such interest payment date, such bond or bonds or coupon or coupons will be paid. The county treasurer, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon, or amortization bond coupon or coupons.

(3) Upon receipt of such amount, the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto and the coupons paid, in the case of amortization bonds, and return the same, with his receipt, to the county treasurer.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2268. Repemption of bonds held by one other than state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding optional bonds, or coupons in the case of amortization bonds, of the issue or series to which such sinking and interest fund belongs, which bonds or coupons are not yet due but are then redeemable or will become redeemable on the next interest payment date, and whenever such bonds or coupons are not held by the state of Montana, the county treasurer must apply such available money in payment and redemption of as many of such bonds, or coupons in the case of amortization bonds, as the same will pay and redeem.

(2) The county treasurer must give notice to the holder of such bonds or coupons, if known to him, or to any bank or financial institution at which such bonds or coupons are payable, at least 15 days before the next interest payment date, that such bonds and coupons will be paid and redeemed on such date. The county treasurer must also publish in the official newspaper of the county, once a week for 2 consecutive weeks immediately preceding such interest payment date, a notice that such bonds or coupons have been called in for redemption and will be paid in full on such interest payment date.

(3) If such bonds or coupons are payable at some bank or financial institution, the county treasurer must remit to such bank or financial institution, before such interest payment date, an amount sufficient to pay and redeem such bonds or coupons. If such bonds are not presented for payment and redemption on such interest payment date, interest thereon shall cease on such date.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2269. Order of redemption of bonds. All bonds or amortization bond coupons paid and redeemed under the provisions of 7-7-2267 or 7-7-2268 must be paid and redeemed in the numerical order in which the same were issued or become due.

History: En. Sec. 29, Ch. 188, L. 1931; amd. Sec. 1, Ch. 152, L. 1933; re-en. Sec. 4630.29, R.C.M. 1935; amd. Sec. 1, Ch. 46, L. 1939; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2043(part).

7-7-2270. Authority to purchase outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of the principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state of Montana and are not subject to redemption, the county treasurer, at the direction of the board of county commissioners, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the board may feel justified in paying, not in any case exceeding 5%.

History: En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; R.C.M. 1947, 16-2044(part); amd. Sec. 4, Ch. 256, L. 1979.

7-7-2271. Repealed. Sec. 7, Ch. 256, L. 1979.

7-7-2272. Cancellation of bonds and coupons. (1) (a) All bonds and interest coupons paid by the county treasurer from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the county clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The county treasurer shall enter on the record of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(b) The county clerk shall exhibit such bonds and coupons, with such report, to the board of county commissioners at the next regular meeting thereof.

(2) (a) When any bonds have been or are purchased with any sinking and interest fund money under the provisions of 7-7-2270, such bonds, with attached interest coupons, if not then in the possession of the county treasurer, shall be immediately delivered to him. Such county treasurer shall at once endorse across the face of each such bond the word "Paid" and the date thereof and shall sign such endorsement; and such treasurer shall, without detaching the same, cancel each interest coupon attached to such bonds by endorsing across the face thereof the word "Canceled" and the date thereof and shall sign such endorsement. After making such endorsements on such bonds and coupons, the county treasurer shall enter on the record of registration thereof the date such bonds and coupons were so endorsed by him as being paid and canceled, with the numbers and amounts thereof and the dates when the same would have become due and payable if they had not been so purchased. The county treasurer shall then deliver such bonds, with the canceled coupons attached, to the county clerk, with a report showing the numbers thereof and amount paid on the purchase thereof.

(b) The county clerk shall exhibit such bonds, with attached coupons and report, to the board at its next regular session.

History: (1)En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; Sec. 16-2045, R.C.M. 1947; (2)En. Sec. 30, Ch. 188, L. 1931; re-en. Sec. 4630.30, R.C.M. 1935; amd. Sec. 2, Ch. 46, L. 1939; amd. Sec. 1, Ch. 12, L. 1963; Sec. 16-2044, R.C.M. 1947; R.C.M. 1947, 16-2044(part), 16-2045(part).

7-7-2273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the county treasurer shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the county clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The county clerk shall exhibit such warrants and bonds, with such report, to the board of county commissioners at the next regular meeting thereof.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

7-7-2274. Closing of accounts and transfer of money to other accounts. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest or not used as provided in 7-7-2261, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

History: En. Sec. 27, Ch. 188, L. 1931; re-en. Sec. 4630.27, R.C.M. 1935; amd. Sec. 1, Ch. 103, L. 1973; R.C.M. 1947, 16-2041(part).

7-7-2275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the board of county commissioners of any county is hereby vested with the power and authority to issue amortization bonds for the purpose of refunding any outstanding bonds of such county held by the state of Montana and which were not issued either as amortization or serial bonds, whether such bonds are due or not, and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-2210 and shall bear interest at such rate as may be agreed upon between the board of county commissioners and the board of investments. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same to an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive boards of county commissioners of the right to advertise, sell, and issue refunding bonds in the manner provided by part 23.

History: En. Sec. 32, Ch. 188, L. 1931; re-en. Sec. 4630.32, R.C.M. 1935; amd. Sec. 24, Ch. 234, L. 1971; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 16-2046.

Part 23

County Refunding General Obligation Bonds

7-7-2301. Authority to issue refunding general obligation bonds. (1) The board of county commissioners of every county of the state is hereby vested with the power and authority to issue, negotiate, and sell coupon bonds on the credit of the county, as more specifically provided in this part and part 22, for the purpose of refunding, paying, and redeeming optional, redeemable, or maturing bonds when:

(a) there are not sufficient funds available to pay such bonds; and

(b) it is deemed in the best interests of the county to refund such bonds.

(2) (a) The board shall have the power and authority to negotiate with the holders of the bonds of said county. for an agreement or agreements whereby said bondholders agree to accept less than the full amount of such bonds and the accrued unpaid interest thereon in full payment and satisfaction thereof, to enter into such agreement or agreements, and to issue refunding bonds for the amount agreed upon whenever:

(i) the total indebtedness of a county exceeds 5% of the value of the taxable property therein; and

(ii) the board of county commissioners of said county finds and determines that the county is unable to pay and discharge such indebtedness in full.

(b) These bonds may be issued in more than one series if the circumstances so require, and each series may be either amortization bonds or serial bonds. The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of such bonds.

History: En. Sec. 1, Ch. 188, L. 1931; re-en. Sec. 4630.1, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1937; amd. Sec. 1, Ch. 136, L. 1963; amd. Sec. 12-102, Ch. 197, L. 1965; amd. Sec. 5, Ch. 100, L. 1973; R.C.M. 1947, 16-2008(part).

7-7-2302. Applicability of certain other bond provisions. The provisions of 7-7-2203 through 7-7-2211, 7-7-2222, and 7-7-2251 through 7-7-2274 apply to refunding bonds issued under this part.

History: En. by Code Commissioner, 1979.

7-7-2303. Term of refunding general obligation bonds. (1) (a) The following limitations as to term shall apply to all bonds issued under 7-7-2301(1). Except as provided in subsection (1)(b), no bonds shall be issued for a longer term than 10 years.

(b) (i) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

(ii) If such 10-year term will require an annual tax levy for payment of such refunding bonds exceeding 10 mills on all property subject to taxation in the county, the term may be so extended as to reduce the required annual levy to 10 mills; provided, however, that the term shall not under any circumstances exceed 20 years.

(2) Bonds issued for any of the purposes designated in 7-7-2301(2) shall not be for a longer term than will be required to repay the bonds with interest through a tax levy of 10 mills on all the property within the county subject to taxation, and the term shall not exceed 20 years.

(3) The length of the term required shall be estimated and calculated by the board of county commissioners, based upon the percentage of valuation of the property upon which taxes are levied and paid within such county as ascertained from the last completed assessment for state and county taxes, taking into account probable changes in the taxable valuation and losses in tax collections. Irrespective of any miscalculation by the county commissioners in fixing the term of the bonds, the county must from year to year make

a sufficient tax levy to pay the interest and installments on principal on the bonds as the same fall due.

History: En. Sec. 4, Ch. 188, L. 1931; amd. Sec. 2, Ch. 115, L. 1933; re-en. Sec. 4630.4, R.C.M. 1935; amd. Sec. 3, Ch. 135, L. 1937; amd. Sec. 1, Ch. 33, L. 1943; amd. Sec. 6, Ch. 234, L. 1971; amd. Sec. 2, Ch. 284, L. 1973; R.C.M. 1947, 16-2011(part).

7-7-2304. Interest rate on refunding general obligation bonds. No refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least ½ of 1% less than the outstanding bonds which are to be refunded.

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2305 through 7-7-2310 reserved.

7-7-2311. Issuance of refunding general obligation bonds without election. Bonds may be issued without submitting the same to an election if the bonds are issued for the purpose of:

(1) refunding, paying, and redeeming optional, redeemable, or maturing bonds as set forth in 7-7-2301(1); and

(2) refunding any bonds for which the holders have agreed to accept less than the full amount of principal and interest in full payment and satisfaction as set forth in 7-7-2301(2).

History: En. Sec. 6, Ch. 188, L. 1931; re-en. Sec. 4630.6, R.C.M. 1935; amd. Sec. 4, Ch. 135, L. 1937; amd. Sec. 2, Ch. 33, L. 1943; R.C.M. 1947, 16-2013(part).

7-7-2312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the county treasurer to apply the proceeds derived from the sale of such bonds to the payment of such warrants or bonds to be so funded or refunded.

History: En. Sec. 31, Ch. 188, L. 1931; re-en. Sec. 4630.31, R.C.M. 1935; R.C.M. 1947, 16-2045(part).

Part 24

County Loans

7-7-2401. Authorization to borrow money. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient.

History: En. Subd. 26, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.25, R.C.M. 1935; R.C.M. 1947, 16-1028.

7-7-2402. Election required to borrow money — exceptions. (1) Except as provided in subsection (3), the board of county commissioners must not borrow money for any of the purposes mentioned in this title or for any single purpose to an amount exceeding $10,000 without:

(a) first having submitted the question of a loan to a vote of the electors of the county; and

(b) the approval of a majority of the electors of the county.

(2) If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds or otherwise as may seem best for the interests of the county.

(3) It shall not be necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

History: (1), (3)En. Sec. 4270, Pol. C. 1895; re-en. Sec. 2933, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1919; re-en. Sec. 4717, R.C.M. 1921; re-en. Sec. 4717, R.C.M. 1935; Sec. 16-2301, R.C.M. 1947; (2)En. Sec. 4274, Pol. C. 1895; re-en. Sec. 2937, Rev. C. 1907; re-en. Sec. 4721, R.C.M. 1921; re-en. Sec. 4721, R.C.M. 1935; Sec. 16-2305, R.C.M. 1947; R.C.M. 1947, 16-2301, 16-2305.

7-7-2403. Determination of amount of loan. Whenever it is necessary to submit to a vote of the electors of the county the question of making a loan, the board must first determine the amount necessary to be raised.

History: En. Sec. 4271, Pol. C. 1895; re-en. Sec. 2934, Rev. C. 1907; re-en. Sec. 4718, R.C.M. 1921; re-en. Sec. 4718, R.C.M. 1935; R.C.M. 1947, 16-2302.

7-7-2404. Notice of election. Notice of the election, clearly stating the amount to be raised and the object of the loan, must be given in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2405. Form of ballots. There must be written or printed on the ballots the words "For the loan" and "Against the loan", and in voting the elector must vote for the proposition he prefers by making an X opposite the proposition.

History: En. Sec. 4273, Pol. C. 1895; re-en. Sec. 2936, Rev. C. 1907; re-en. Sec. 4720, R.C.M. 1921; re-en. Sec. 4720, R.C.M. 1935; R.C.M. 1947, 16-2304.

7-7-2406. Conduct of election and canvass of results. The election must be held and conducted and the returns must be made in all respects in the manner prescribed by law in regard to the submission of questions to the electors of a locality under the general election law.

History: En. Sec. 4272, Pol. C. 1895; re-en. Sec. 2935, Rev. C. 1907; re-en. Sec. 4719, R.C.M. 1921; re-en. Sec. 4719, R.C.M. 1935; R.C.M. 1947, 16-2303(part).

7-7-2407. Restriction on use of loan proceeds. All money borrowed by or on behalf of any county must be used only for the purpose specified in the law authorizing the loan.

History: En. Sec. 4195, Pol. C. 1895; re-en. Sec. 2875, Rev. C. 1907; re-en. Sec. 4446, R.C.M. 1921; Cal. Pol. C. Sec. 4005; re-en. Sec. 4446, R.C.M. 1935; R.C.M. 1947, 16-806.

Parts 25 through 40 reserved

Part 41

General Provisions Related to Municipalities

7-7-4101. Purposes for which indebtedness may be incurred. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by borrowing money or issuing bonds for the following purposes:

(1) erection of public buildings;

(2) construction of sewers, sewage treatment and disposal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) construction of bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) to acquire, open, and/or widen any street and to improve the same by constructing, reconstructing, and repairing pavement, gutters, curbs, and vehicle parking strips and to pay all or any portion of the cost thereof;

(6) the purchase of fire apparatus and street and other equipment;

(7) building, purchasing, constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water; and

(8) the funding of outstanding warrants and maturing bonds.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4102. Investment of certain bond proceeds. (1) Whenever the city or town has under its control any money realized from the sale of bonds, for which there is no immediate demand and which in the judgment of the city or town council it would be advantageous to invest in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, the city or town council is authorized in their discretion to direct the city treasurer or town clerk to make such investments.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the bond sinking fund of the city or town.

History: En. Sec. 1, Ch. 31, L. 1961; amd. Sec. 1, Ch. 10, L. 1963; amd. Sec. 2, Ch. 268, L. 1969; R.C.M. 1947, 11-1310(2).

7-7-4103. General qualifications to vote on questions of municipal indebtedness. (1) Registered electors of the city, town, or other municipal corporation may vote upon any proposal to create or increase any indebtedness of the city, town, or other municipal corporation required by law to be submitted to a vote of the electors.

(2) No elector, otherwise qualified, may be denied the right to vote because the polling place for a general election for the precinct wherein he resides and is entitled to vote lies within another city, town, or other municipal corporation.

History: En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part); amd. Sec. 2, Ch. 212, L. 1979.

7-7-4104 through 7-7-4110 reserved.

7-7-4111. Procedure to declare municipal bankruptcy. (1) Any city or town may submit itself and a proposed plan of composition to the jurisdiction of the bankruptcy court having jurisdiction of such matter and be governed by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The city or town may compose and enter into, submit itself to, and perform the plan of composition as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its city council or town council of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the composition of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the city or town shall proceed to the composition of its municipal indebtedness under the provisions of the federal laws; and

(b) upon the acceptance in writing of the proposed plan of composition of municipal indebtedness by creditors of the petitioning municipal corporation owning not less than the percentage thereof in amount of the municipal securities affected or to be affected by the proposed plan of composition, as provided in the federal laws.

History: **En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979.**

7-7-4112. Power to comply with court decrees related to bankruptcy. Any city or town may comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the composition of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court.

History: **En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979.**

7-7-4113. Role of state and state agencies in relation to bankruptcy. The state or any department or agency thereof holding any of the securities of any such city or town shall have the power to consent to any plan of composition of the indebtedness of any such city or town by the board having custody of and control over any such securities or by any other official or officials having such custody and control.

History: **En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part).**

Part 42

Municipal General Obligation Bonds

7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 18% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional

indebtedness but is merely the changing of the evidence of outstanding indebtedness.

History: (1), (3)En. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; Sec. 11-2303, R.C.M. 1947; (2)En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; Sec. 11-966, R.C.M. 1947; R.C.M. 1947, 11-966(part), 11-2303(part); amd. Sec. 2, Ch. 617, L. 1979.

7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town which owns and controls the water supply and water system and devotes the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 36% over and above the 18%, referred to in 7-7-4201, of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

History: Ap. p. Sec. 3, Ch. 160, L. 1931; re-en. Sec. 5278.3, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1951; amd. Sec. 2, Ch. 34, L. 1955; amd. Sec. 1, Ch. 33, L. 1973; amd. Sec. 30, Ch. 566, L. 1977; Sec. 11-2303, R.C.M. 1947; Ap. p. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; Sec. 11-966, R.C.M. 1947; R.C.M. 1947, 11-966(part), 11-2303(part); amd. Sec. 3, Ch. 617, L. 1979.

7-7-4203. What constitutes a single purpose. The following shall be deemed a single purpose:

(1) acquiring land for a site for a public building or for any other public use and constructing, erecting, or acquiring by purchase any building thereon and furnishing and equipping the same;

(2) acquiring of rights-of-way for street or other purposes, making improvements thereon, or constructing sewers or water pipelines;

(3) procuring of a water supply and constructing or acquiring of a water system and improving the same if necessary.

History: En. Sec. 2, Ch. 160, L. 1931; re-en. Sec. 5278.2, R.C.M. 1935; R.C.M. 1947, 11-2302.

7-7-4204. Nature of general obligation bonds. All bonds issued under the provisions of this part shall be legal and valid obligations of the city or town issuing the same, and the full faith and credit of such city or town are hereby irrevocably pledged for the prompt payment of both principal and interest thereof as the same become due.

History: En. Sec. 20, Ch. 160, L. 1931; re-en. Sec. 5278.20, R.C.M. 1935; R.C.M. 1947, 11-2320.

7-7-4205. Term of general obligation bonds. No bonds for any purpose shall be issued for a longer term than 20 years.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4206. Redemption of bonds. All bonds issued for a longer term than 5 years shall be redeemable at the option of the city or town on any interest payment date after one-half of the term for which they were issued has expired, and it shall be so recited in the bonds.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4207. Bond interest rate. The maximum rate of interest which any bonds may bear shall be 7% per annum and shall be payable semiannually.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4208. Types of general obligation bonds. All bonds issued by any city or town shall be either amortization bonds or serial bonds. All things being equal, amortization bonds shall be issued in preference to serial bonds; otherwise, serial bonds may be issued.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4209. Amortization bonds. The term "amortization bonds", as used in this part, is hereby defined as meaning that form of bond on which a part of the principal is required to be paid each time interest becomes due and payable, which part payment of principal increases with each following installment in the same amount the interest payment decreases, so that the combined amount payable on both principal and interest is the same on each interest payment date; provided, however, that the final payment may vary in amount from the other payments to the extent resulting from disregarding fractional cents in the other payments.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4210. Serial bonds. The term "serial bonds", as used in this part, is hereby defined as being a bond issue payable in equal annual installments, one installment consisting of one or more bonds, becoming due and payable each year (the amount to be paid and redeemed each year being determined by dividing the total amount of the bonds to be issued by the total number of years the issue is to run), so that the total amount of principal to be paid each year the bonds are to run will be the same; provided, however, that the payments becoming due the first year or the first and second years may vary in amount from the other payments to the extent resulting from fixing the amount of each bond of the other payments at $100, $500, or some multiple thereof.

History: En. Sec. 5, Ch. 160, L. 1931; re-en. Sec. 5278.5, R.C.M. 1935; amd. Sec. 2, Ch. 152, L. 1953; R.C.M. 1947, 11-2305(part).

7-7-4211 through 7-7-4220 reserved.

7-7-4221. Election on question of incurring indebtedness — exception. (1) Except as provided in subsection (2), whenever the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality for any purpose authorized by law, the question of issuing the bonds shall first be submitted to the registered electors of the city or town.

(2) It is not necessary to submit to the electors the question of issuing refunding bonds to refund bonds issued and outstanding or the question of issuing revenue bonds not pledging the general credit of the municipality under any laws of this state.

History: (1), (2)En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; ; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; Sec. 11-2301, R.C.M. 1947; (3)En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; Sec. 11-2306, R.C.M. 1947; R.C.M. 1947, 11-2301(part), 11-2306(part); amd. Sec. 5, Ch. 212, L. 1979; amd. Sec. 315, Ch. 571, L. 1979.

Compiler's Comments

Transition. Sec. 404, Ch. 571, L. 1979, is a transition section, the text of which may be found in the compiler's comment to 13-1-101.

7-7-4222. Election required for bond issue relating to water and sewer systems. No money must be borrowed on bonds issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewer system until the proposition has been submitted to a vote and the majority vote cast in favor thereof.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4223. Procedure to call election on question of bonded indebtedness. An election on the question of issuing bonds may be called by the city or town council or commission on its passage of the necessary resolution, as hereinafter provided, or after there has been presented to the council or commission a petition asking that such election be held and question submitted.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4224. Petition to request election. (1) A petition asking that an election be held on the question of issuing bonds shall be signed by not less than 20% of the qualified electors of the city or town. The petition shall give the street and house number, if any, and the voting precinct of each person signing the same.

(2) Every petition for the calling of an election to vote upon the question of issuing bonds shall plainly and clearly state the purpose or purposes for which it is proposed to issue such bonds and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one petition if each purpose, with an estimate of the amount of bonds to be issued therefor, is separately stated in such petition.

(3) Such petition may consist of one sheet or of several sheets, identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the city or town clerk as hereinafter provided.

(4) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated or assisted in circulating such petition that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing the same.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4225. Presentation of petition to city or town clerk — clerk's certificate. (1) The completed petition shall be filed with the city or town clerk. The clerk shall, within 15 days thereafter, carefully examine the same and the county records showing the qualifications of the petitioners and attach thereto a certificate, under his official signature.

(2) The certificate shall set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to such petition are possessed of all of the qualifications required of signers to such petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the city or town.

History: En. Sec. 6, Ch. 160, L. 1931; re-en. Sec. 5278.6, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1937; amd. Sec. 2, Ch. 15, L. 1943; amd. Sec. 9, Ch. 158, L. 1971; amd. Sec. 2, Ch. 413, L. 1973; R.C.M. 1947, 11-2306(part).

7-7-4226. Resolution to submit question of issuing bonds to voters. (1) When the governing body of any municipality considers it necessary to issue bonds pledging the general credit of the municipality pursuant to any statute of this state, the governing body shall pass and adopt a resolution.

(2) The resolution shall:

(a) recite the purpose or purposes for which it is proposed to issue the bonds;

(b) fix the amount of bonds to be issued for each purpose;

(c) determine the number of years through which the bonds are to be paid, not exceeding the limits fixed in 7-7-4205; and

(d) unless the bonds are revenue bonds not pledging the general credit of the municipality, make such provisions as are necessary for submitting the question to the registered electors of the city or town at the next general city or town election or at a special election which the governing body may call for the purpose.

(3) Whenever the bond issuance is proposed by petition, the governing body shall, before submitting the measure to the electors, pass a resolution containing the information herein required and, in addition thereto, setting forth the essential facts in regard to the filing and presentation of the petition.

History: En. 11-2307.1 by Sec. 3, Ch. 413, L. 1973; R.C.M. 1947, 11-2307.1; amd. Sec. 6, Ch. 212, L. 1979; amd. Sec. 316, Ch. 571, L. 1979.

7-7-4227. Notice of election. (1) Whether such election is held at the general city or town election or at a special election, separate notice shall be given thereof.

(2) (a) The notice shall state:

(i) the date when the election will be held;

(ii) the hours between which the polls will be open;

(iii) the amount of bonds proposed to be issued;

(iv) the purpose thereof;

(v) the term of years through which the bonds will be paid; and

(vi) such other information regarding the election and the proposed bonds as the board may consider proper.

(b) If the bonds proposed to be issued are for two or more purposes, each purpose and the amount thereof must be separately stated.

(3) The notice shall be:

(a) posted in each voting precinct in the city or town at least 10 days prior to the date for holding the election; and

(b) published as provided in 13-1-108.

History: En. Sec. 8, Ch. 160, L. 1931; re-en. Sec. 5278.8, R.C.M. 1935; R.C.M. 1947, 11-2308(part); amd. Sec. 317, Ch. 571, L. 1979.

7-7-4228 through 7-7-4234. Repealed. Sec. 407, Ch. 571, L. 1979.

7-7-4235. Percentage of electors required to authorize the issuing of bonds. (1) Wherever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at either a general or special election, not less than 40% of the registered electors entitled to vote on the proposition or question must vote thereon; otherwise, the proposition shall be considered to have been rejected.

(2) If 40% or more of the registered electors do vote on the proposition or question at the election and a majority of the votes are cast in favor of the question or proposition, then the proposition or question shall be considered to have been adopted and approved.

History: En. Sec. 11, Ch. 160, L. 1931; re-en. Sec. 5278.11, R.C.M. 1935; R.C.M. 1947, 11-2311; amd. Sec. 318, Ch. 571, L. 1979.

7-7-4236. Resolution to issue bonds. (1) If 40% or more of the qualified electors of the city or town entitled to vote on the question of issuing bonds voted thereon and a majority of the votes were cast in favor of the issuing of the bonds, the city or town council shall, at a regular or special meeting held within 30 days thereafter, pass a resolution providing for the issuance of the bonds.

(2) The resolution shall recite:

(a) the purpose for which the bonds are to be issued;

(b) the amount thereof;

(c) the maximum rate of interest the bonds may bear;

(d) the date they shall bear;

(e) the period of time through which they are payable; and

(f) that any bond may be redeemed in full, at the option of the city or town, on any interest payment date after expiration of one-half of the term for which the bond was issued.

(3) The resolution shall provide for the manner of execution of the bonds. It shall provide that preference shall be given amortization bonds but shall fix the denomination of serial bonds in case it shall be found advantageous to issue bonds in that form. The council may in its discretion provide that such bonds may be issued and sold in two or more series or installments.

(4) The resolution shall adopt a form of notice of the sale of the bonds.

History: En. Sec. 12, Ch. 160, L. 1931; re-en. Sec. 5278.12, R.C.M. 1935; R.C.M. 1947, 11-2312(part); amd. Sec. 7, Ch. 212, L. 1979.

7-7-4237 through 7-7-4250 reserved.

7-7-4251. Form of notice of sale of bonds. The notice of sale shall state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and shall be substantially in the following form:

NOTICE OF SALE OF (CITY OR TOWN) BONDS

Notice is hereby given by the council of the (city or town) of ...., Montana, that the council will, on the .... day of ...., 19.., at the hour of ... ...m., at its council chamber in the (city or town) of ...., Montana, sell to the highest and best bidder for cash either amortization or serial bonds of the said (city or town) in the total amount of .... dollars, ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the council.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds as the council may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each, except the last bond which will be in the amount of .... dollars ($....); the sum of .... dollars ($....) of said serial bonds will become due and payable on the .... day of ...., 19.., and a like amount on the same day each year thereafter until all such bonds are paid, except that the last installment will be in the amount of .... dollars ($....).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., will bear interest at a rate not exceeding 6% per annum, payable semiannually, on the .... day of .... and on the .... day of .... in each year and will be redeemable (here insert the optional provisions, if any, recited in the bonds).

Said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The council reserves the right to reject any and all bids and to sell said bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars ($....), payable to the order of the (city or town) clerk, which will be forfeited by the successful bidder in the event he shall fail or refuse to complete the purchase of said bonds in accordance with the terms of his bid.

All bids shall be addressed to the council of the (city or town) of .... and delivered to the clerk of said (city or town).

....
Mayor of the (city or town) of
...., Montana

ATTEST:
....(City or Town) Clerk

History: En. Sec. 13, Ch. 160, L. 1931; re-en. Sec. 5278.13, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2313.

7-7-4252. Publication of notice of sale. The city or town council or commission shall cause such notice to be published once in each calendar week in each of the 4 successive calendar weeks (four publications) immediately preceding the week which contains the date of sale in a newspaper of general circulation printed and published in said city or town if there be one and, if not, then in a newspaper of general circulation printed and published in the county in which said city or town is located. The council or commission may in its discretion cause such notice to be published in such other newspaper or newspapers published either within or without the state as in the opinion of the council or commission will be most likely to give notice of such sale to prospective bidders.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).

7-7-4253. Notice of sale and other information to be supplied to board of investments. The city or town clerk must, at least 15 days before the date fixed for the sale of general obligation bonds only, send a copy of the published notice required by 7-7-4252 to the secretary of the board of investments and shall thereupon furnish to the secretary a transcript of the proceedings had for the issuance of general obligation bonds only and such other information relating thereto as the secretary may find necessary.

History: En. Sec. 14, Ch. 160, L. 1931; re-en. Sec. 5278.14, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1955; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2314(part).

7-7-4254. Procedure for sale of bonds. (1) The city or town council shall meet at the time and place fixed in the notice to consider bids for the bonds.

(2) The bonds shall be sold at not less than par and accrued interest to date of delivery, and each bidder shall specify the form of bonds to be issued, whether amortization or serial, and the rate of interest at which he will purchase the bonds. A bid for amortization bonds shall have preference over a bid for serial bonds, all other things being equal. In determining the kind of bonds to be issued, the council shall take into consideration not only the rate of interest demanded on each kind but also all other known elements affecting the interests of the city or town. The council shall accept the bid it considers most advantageous to the city or town. The council may reject any and all bids and sell the bonds at private sale if this is considered to be in the best interests of the city or town; provided, however, that the bonds may not be sold at less than par and accrued interest to date of delivery.

(3) No attorneys' fees or brokerage or other fees or commissions of any kind may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale thereof.

History: En. Sec. 15, Ch. 160, L. 1931; re-en. Sec. 5278.15, R.C.M. 1935; amd. Sec. 8, Ch. 234, L. 1971; R.C.M. 1947, 11-2315; amd. Sec. 8, Ch. 212, L. 1979.

7-7-4255. Form and execution of bonds. (1) At the time of the sale of the bonds or at a meeting held thereafter, the city or town council shall prescribe the form of the bonds, whether amortization or serial bonds, and of the coupons to be attached thereto.

(2) Each and every bond and every coupon attached thereto must be signed by the mayor of the city or town and by the treasurer thereof and must be attested by the city or town clerk. Each bond shall have the city or town seal affixed thereto.

History: En. Sec. 16, Ch. 160, L. 1931; re-en. Sec. 5278.16, R.C.M. 1935; amd. Sec. 6, Ch. 260, L. 1959; R.C.M. 1947, 11-2316.

7-7-4256. Printing of bonds. (1) Except as provided in subsection (2), the city or town clerk, under the direction of the council, shall cause the bonds, with coupons attached thereto, to be printed or lithographed at the expense of the city or town at lowest commercial rates.

(2) A purchaser of such bonds may furnish the same to the city or town, in the form prescribed by the council, for execution, if the same is done at his own expense and without cost or expense to the city or town.

History: En. Sec. 17, Ch. 160, L. 1931; re-en. Sec. 5278.17, R.C.M. 1935; R.C.M. 1947, 11-2317.

7-7-4257. Registration of bonds. (1) When duly executed by the officers of the city or town as herein provided, the bonds shall be registered by the city treasurer or town clerk in a book provided for that purpose before being delivered to the purchaser.

(2) Such registration shall show:

(a) the number and amount of each bond;

(b) the date of issue, date redeemable, and date when the same will become due;

(c) the amount of all payments of both principal and interest required to be made on each bond, with the dates when the same are required to be made; and

(d) the name and address of the purchaser.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part).

7-7-4258. Copy of bond to be kept by city treasurer or town clerk. The city or town clerk shall also deliver to the city treasurer or town clerk an unsigned and canceled printed copy of one of the bonds, as so issued and registered, to be preserved in his office.

History: En. Sec. 18, Ch. 160, L. 1931; re-en. Sec. 5278.18, R.C.M. 1935; R.C.M. 1947, 11-2318(part).

7-7-4259. Delivery of bonds. (1) If the board of investments is the purchaser of the bonds, the city treasurer or town clerk shall forward the registered bonds to the department of administration. The department shall deliver them to the state treasurer, and payment therefor shall be made in the manner provided by law.

(2) If the bonds are purchased by other investors, the city treasurer or town clerk shall deliver the bonds to the purchaser upon receiving full payment therefor.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4260. Disposition of sale proceeds. All money arising from the sale of the bonds shall be paid to the city treasurer or town clerk and shall be immediately available for the purpose for which the bonds were issued and for no other purpose.

History: En. Sec. 19, Ch. 160, L. 1931; re-en. Sec. 5278.19, R.C.M. 1935; amd. Sec. 2, Ch. 326, L. 1974; R.C.M. 1947, 11-2319(part).

7-7-4261. Maintenance of accounts for bond issues. (1) The city treasurer or town clerk shall keep in his books a special and separate sinking fund account for each issue or series of outstanding bonds issued by his city or town. Each such fund must at all times show the exact condition thereof.

(2) All taxes collected for interest and principal on city or town bonds shall be placed to the credit of the sinking fund for which the taxes were levied.

(3) The sinking fund shall be administered as provided in 7-7-123, 7-7-124, and 7-7-4270.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part); amd. Sec. 5, Ch. 256, L. 1979.

7-7-4262. Payment of principal and interest. The city treasurer or town clerk shall pay from the proper sinking and interest fund the interest and principal of each issue or series of outstanding bonds, as such interest and principal become due and at the place where such bonds are payable, upon presentation and surrender of the coupon or coupons or bond or bonds to be paid. If the bonds are held by the state, then all such payments shall be made at the office of the state treasurer, who shall cancel the coupons or bonds and return the same to the city treasurer or town clerk, together with his receipt therefor.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4263. Interest on late payments of principal and interest. Any and all installments of interest or principal of bonds issued under the provisions of this part not promptly paid when due shall draw interest at the rate of 6% per annum from the date due until actually paid, irrespective of the rate of interest on the bonds themselves.

History: En. Sec. 25, Ch. 160, L. 1931; re-en. Sec. 5278.25, R.C.M. 1935; R.C.M. 1947, 11-2325(part).

7-7-4264. Statement as to amount of principal and interest due and payable on bonds. (1) Whenever any city or town has any issue or series of bonds outstanding and there are not sufficient funds on hand available for the payment of the full amount of the interest and principal thereof, the city treasurer or town clerk shall, between July 1 and July 15 in each year while such bonds or any of them remain outstanding and unpaid, make out and deliver to the city or town clerk a statement.

(2) The statement required by subsection (1) shall show the amount required to be raised by tax levy during the then-current fiscal year for payment of interest and principal becoming due and payable during such fiscal year or within 90 days thereafter on each issue or series of bonds outstanding. If no part of the principal of any such issue or series of bonds outstanding or if no part of the principal of any such issue or series of bonds will

become due and payable within such time, then such statement shall show the amount required to be raised by tax levy during such year for payment of interest becoming due during such time and to place the proper amount in the sinking fund for the payment of the principal of such bonds when they become due, as provided in 7-7-4204.

(3) The statement prepared by the city treasurer or town clerk shall be presented by the city or town clerk to the city or town council at its next meeting.

History: **En. Sec. 21, Ch. 160, L. 1931; re-en. Sec. 5278.21, R.C.M. 1935; R.C.M. 1947, 11-2321.**

7-7-4265. Tax levy for payment of bonds. (1) The city or town council, at the time of making the levy of taxes for general city or town purposes, must levy a separate and special tax upon all taxable property in the city or town for the payment of interest and principal for each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from the levy for any other issue or series of bonds.

(2) The levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of the bonds as will become due and payable during the then-current fiscal year or within 90 days thereafter, as such amount is shown by the treasurer's statement provided for by 7-7-4264. If no part of the principal of such bonds will become due and payable within such time, then such tax levy must be high enough to raise an amount sufficient to pay all interest which will become due and payable during the current fiscal year or within 90 days thereafter and to also place in the sinking fund for such issue or series of bonds, for the payment of the principal when the same becomes due, an amount not less than a sum produced by dividing the whole amount for which the series or issue of bonds were originally issued by the number of years for which such series or issue of bonds were originally issued to run, as such amounts are shown by the treasurer's statement provided for by 7-7-4264.

History: **En. Sec. 22, Ch. 160, L. 1931; re-en. Sec. 5278.22, R.C.M. 1935; R.C.M. 1947, 11-2322; amd. Sec. 9, Ch. 212, L. 1979.**

7-7-4266. Procedure in case of insufficient tax levy — individual liability of council members. (1) If the council of any city or town shall fail, neglect, or refuse in any year to make a levy sufficient to pay the interest on and principal of any issue or series of bonds as required by the provisions of 7-7-4265, the holder of any bond of such issue or series or any taxpayer paying taxes on property situated in such city or town may apply to the district court of the county in which the city or town issuing such bonds is situated for a writ of mandate to compel the city or town council to make a proper and sufficient levy for such purposes.

(2) If, upon the hearing of such application, it shall appear to the satisfaction of the court that the city or town council has failed, neglected, or refused to make any levy whatever for such purposes or has made a levy but that the same is insufficient to raise the amount required to be raised for such purposes under the provisions of 7-7-4265, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and

requiring such city or town council, at the next meeting thereof for the purpose of making and fixing city or town levies, to make and fix a tax levy against all taxable property in such city or town sufficient to raise the amount of such deficiency. This levy shall be in addition to the levy required to be made for the then-current fiscal year.

(3) Any costs which may be allowed or awarded the petition in any such proceeding shall be paid by the members of the city or town council and shall not be a charge against the city or town.

History: En. Sec. 23, Ch. 160, L. 1931; re-en. Sec. 5278.23, R.C.M. 1935; R.C.M. 1947, 11-2323.

7-7-4267. Redemption of bonds held by state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding bonds of the issue or series to which such sinking and interest fund belongs and whenever such bonds are held by the state, the city treasurer or town clerk must apply such available money in payment of as many of such bonds as the same will pay.

(2) Not less than 15 days before the next interest payment date, the city treasurer or town clerk must give notice to the board of investments that on such interest payment date, such bond or bonds will be paid. The city treasurer or town clerk, before such interest payment date, must remit to the state treasurer the amount required to pay such bond or bonds, with the interest thereon.

(3) Upon receipt of such amount, the state treasurer must cancel such bond or bonds and all unpaid interest coupons attached thereto and return the same, with his receipt, to the city treasurer or town clerk.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).

7-7-4268. Redemption of bonds held by one other than state. (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding optional bonds of the issue or series to which such sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on the next interest payment date, and whenever such bonds are not held by the state, the city treasurer or town clerk must apply such available money in payment and redemption of as many of such bonds as the same will pay and redeem.

(2) The city treasurer or town clerk must give notice to the holder of such bond or bonds, if known to him, or to any bank or financial institution at which such bonds are payable, at least 15 days before the next interest payment date, that such bonds will be redeemed and paid on such date. The city treasurer or town clerk must also publish in some newspaper of general circulation printed and published in the city or town and, if there be none, then in some newspaper of general circulation in such city or town printed and published in the county in which such city or town is situated a notice that such bond or bonds have been called in for redemption and will be paid in full on such interest payment date. The notice shall be published once a

week for 2 successive weeks immediately preceding such interest payment date.

(3) If such bonds are payable at some bank or financial institution, the city treasurer or town clerk must remit to such bank or institution, before such interest payment date, an amount sufficient to pay and redeem such bonds. If such bonds are not presented for redemption and payment on such interest payment date, interest thereon shall cease on such date.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).

7-7-4269. Order of redemption of bonds. All bonds paid and redeemed under the provisions of 7-7-4267 or 7-7-4268 must be paid and redeemed in the numerical order in which the same were issued.

History: En. Sec. 26, Ch. 160, L. 1931; re-en. Sec. 5278.26, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2326(part).

7-7-4270. Authority to buy outstanding bonds. Whenever there is available money in any sinking fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding bonds of the issue or series to which the sinking fund belongs and whenever such bonds are not held by the state and are not subject to redemption, the city treasurer or town clerk, at the direction of the city or town council, shall purchase such bonds if this can be done at not more than par and accrued interest or at such reasonable premium as the council may feel justified in paying, not, in any case, exceeding 5%.

History: En. Sec. 27, Ch. 160, L. 1931; re-en. Sec. 5278.27, R.C.M. 1935; R.C.M. 1947, 11-2327(part); amd. Sec. 6, Ch. 256, L. 1979.

7-7-4271. Repealed. Sec. 7, Ch. 256, L. 1979.

7-7-4272. Cancellation of bonds and coupons. (1) All bonds and interest coupons paid by the city treasurer or town clerk from time to time shall be canceled by him, and after such cancellation, he shall deliver the same to the city or town clerk, with a report showing the numbers of such bonds and the amounts paid as principal and interest thereon. The city treasurer or town clerk shall enter on the records of the registration of such bonds the date of the payment of the same and the several coupons attached thereto.

(2) The city or town clerk shall exhibit such bonds and coupons, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4273. Cancellation of warrants and refunded general obligation bonds. (1) Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, the city treasurer or town clerk shall, upon taking up such warrants or bonds, cancel the same, keep a record thereof, and deliver the same to the city or town clerk, with a report showing the numbers thereof and the amounts paid for principal and interest.

(2) The city or town clerk shall exhibit such warrants or bonds, with such report, to the city or town council at the next regular meeting thereof.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

7-7-4274. Closing of accounts and transfer of money to other funds. When all bonds of any series or issue, with the interest thereon, have been fully paid or called in for payment and there remains in the sinking and interest fund for such series or issue any amount not required for the payment of such bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the city or town or to the sinking and interest fund of any other issue or series of bonds outstanding that the city or town council may designate.

History: En. Sec. 24, Ch. 160, L. 1931; re-en. Sec. 5278.24, R.C.M. 1935; R.C.M. 1947, 11-2324(part).

7-7-4275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments, but the interest shall not exceed 6% per annum. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

History: En. Sec. 29, Ch. 160, L. 1931; re-en. Sec. 5278.29, R.C.M. 1935; amd. Sec. 100, Ch. 326, L. 1974; R.C.M. 1947, 11-2329.

Part 43

Municipal Refunding General Obligation Bonds

7-7-4301. Authorization to issue refunding general obligation bonds. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit thereof, by issuing bonds for the funding of outstanding warrants and maturing bonds.

History: En. Subd. 64, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1947; amd. Sec. 1, Ch. 152, L. 1953; amd. Sec. 1, Ch. 34, L. 1955; amd. Sec. 1, Ch. 38, L. 1959; amd. Sec. 1, Ch. 158, L. 1963; amd. Sec. 1, Ch. 100, L. 1973; R.C.M. 1947, 11-966(part).

7-7-4302. Applicability of certain other bond provisions. The provisions of 7-7-4201 through 7-7-4210 and 7-7-4251 through 7-7-4274 apply to refunding bonds issued under this part.

History: En. by Code Commissioner, 1979.

7-7-4303. Term of refunding general obligation bonds. (1) Except as provided in subsection (2), when bonds are issued for the purpose of refunding bonds theretofore issued and outstanding, such bonds shall not be issued for a longer term than 10 years.

(2) If the unexpired term of the bonds to be refunded shall be more than 10 years, the refunding bonds may be issued for such unexpired term.

History: En. Sec. 4, Ch. 160, L. 1931; amd. Sec. 1, Ch. 34, L. 1933; re-en. Sec. 5278.4, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1945; amd. Sec. 4, Ch. 234, L. 1971; amd. Sec. 1, Ch. 284, L. 1973; R.C.M. 1947, 11-2304(part).

7-7-4304. Interest rate on refunding general obligation bonds. No refunding bonds shall be issued unless such refunding bonds shall bear interest at a rate of at least ½ of 1% less than the interest rate of the outstanding bonds to be refunded.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part).

7-7-4305 through 7-7-4310 reserved.

7-7-4311. Procedure to issue refunding general obligation bonds. In order to issue bonds to refund bonds theretofore issued and outstanding, it shall only be necessary for the council, at a regular or duly called special meeting, to pass and adopt a resolution setting forth the facts with regard to the indebtedness to be refunded, showing the reason for issuing such refunding bonds and fixing and determining the details thereof, giving notice of sale thereof in the same manner that notice is required to be given of sale of bonds authorized at an election and then following the procedure in part 42 for the sale and issuance of such bonds.

History: En. Sec. 1, Ch. 160, L. 1931; amd. Sec. 1, Ch. 100, L. 1933; ; re-en. Sec. 5278.1, R.C.M. 1935; amd. Sec. 1, Ch. 12, L. 1937; amd. Sec. 1, Ch. 108, L. 1937; amd. Sec. 1, Ch. 15, L. 1943; amd. Sec. 1, Ch. 62, L. 1945; amd. Sec. 1, Ch. 413, L. 1973; R.C.M. 1947, 11-2301(part).

7-7-4312. Disposition of proceeds of refunding bonds. Whenever bonds are issued for the purpose of funding outstanding warrants or refunding outstanding bonds, it shall be the duty of the city treasurer or town clerk to apply the proceeds derived from the sale of such bonds to the payment of such funded warrants or refunded bonds.

History: En. Sec. 28, Ch. 160, L. 1931; re-en. Sec. 5278.28, R.C.M. 1935; R.C.M. 1947, 11-2328(part).

Part 44

Municipal Revenue Bonds

7-7-4401. Short title. This part may be cited as "The Municipal Revenue Bond Act of 1939".

History: En. Sec. 1, Ch. 126, L. 1939; R.C.M. 1947, 11-2401.

7-7-4402. Definitions. Whenever used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) The term "governing body" shall include bodies and boards, by whatsoever names they may be known, having charge of finances and management of a municipality.

(2) The term "municipality" shall include any city or any town, however organized.

(3) The term "undertaking" shall mean any one or a combination of the following:

(a) water and sewer systems, together with all parts thereof and appurtenances thereto including but not limited to supply and distribution systems, reservoirs, dams, and sewage treatment and disposal works;

(b) public airport construction and public airport building;

(c) convention facilities;

(d) public recreation facilities; and

(e) public parking facilities or other revenue-producing facilities and services authorized in these codes for cities and towns.

History: **En. Sec. 2, Ch. 126, L. 1939; amd. Sec. 1, Ch. 42, L. 1949; amd. Sec. 1, Ch. 111, L. 1959; amd. Sec. 1, Ch. 254, L. 1969; R.C.M. 1947, 11-2402.**

7-7-4403. Interpretation of part. (1) The powers conferred in this part shall be in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) The undertaking may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended and bonds may be issued under this part for said purposes, notwithstanding that any general, special, or local law may provide for the acquisition, purchase, construction, reconstruction, improvement, betterment, and extension of a like undertaking or the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other general, special, or local law, including but not limited to any requirement for the approval by the voters of any municipality.

(3) Insofar as the provisions of this part are inconsistent with the provisions of any other general, special, or local law, the provisions of this part shall be controlling.

History: **En. Sec. 13, Ch. 126, L. 1939; R.C.M. 1947, 11-2413.**

7-7-4404. Authority to acquire, construct, maintain, and operate various undertakings. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) construct, acquire by gift, purchase, or the exercise of the right of eminent domain, reconstruct, improve, better, or extend any undertaking, within or without the municipality or partially within or partially without the municipality, and acquire by gift, purchase, or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith;

(2) operate and maintain any undertaking and furnish the service, facilities, and commodities thereof for its own use and for the use of public and private consumers within or without the territorial boundaries of such municipality; and

(3) prescribe and collect rates, fees, and charges for the services, facilities, and commodities furnished by such undertaking.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4405. Pollution abatement. In addition to the powers which it now may have, any municipality shall have the power under this part to:

(1) enter into cooperative agreements with and accept contributions from industrial establishments relative to the planning, construction, lease or other acquisition, maintenance, and operation of undertakings and apply for and accept grants and loans or any other aid which the United States or any agency thereof may give or make to any political subdivision or agency of this state for undertakings, including all necessary actions preliminary thereto, the purpose of which is to aid in the prevention or abatement of water pollution;

(2) make contracts and execute instruments containing such terms, provisions, and conditions as, in the discretion of the governing body of the municipality, may be necessary, proper, or advisable for the purpose of obtaining such aid;

(3) enter into and perform contracts, whether long-term or short-term, with any industrial establishment for the provision and operation by the municipality of sewer facilities when the governing body of such municipality determines such action to be in the public interest and otherwise essential in order to abate or reduce the pollution of waters caused by discharges of industrial waste by such industrial establishment and to provide for the periodical payment by said industrial establishment to the municipality of an amount at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing (including the payment of principal and interest charges, if any) and of operating and maintaining the sewer facilities serving such industrial establishment.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4406. Cooperation among municipalities. (1) Any two or more municipalities, through their respective governing bodies, are hereby authorized and empowered to enter into and perform such contracts and agreements as they may deem proper for or concerning the planning, construction, lease or other acquisition, and the finance of undertakings, in whole or in part, and the maintenance and operation thereof.

(2) Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the undertakings and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(3) No municipality shall construct an undertaking wholly or partly within the corporate limits of another municipality except with the consent of the governing body of such other municipality.

History: **(1), (2)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (3)En. Sec. 11, Ch. 126, L. 1939; Sec. 11-2411, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2411.**

7-7-4407. Role of state agencies. It shall not be necessary for any municipality proceeding under this part to obtain any certificate of convenience or necessity, franchise, license, permit, or other authorization from any bureau, board, commission, or other like instrumentality of the state in order to acquire, construct, purchase, reconstruct, improve, better, extend, maintain, and operate an undertaking, but the supervisory powers and duties of the department of health and environmental sciences shall continue as heretofore.

History: **En. Sec. 12, Ch. 126, L. 1939; amd. Sec. 106, Ch. 349, L. 1964; R.C.M. 1947, 11-2412.**

7-7-4408 through 7-7-4420 reserved.

7-7-4421. Authority to issue revenue bonds. In addition to the powers which it may now have, any municipality shall have power under this part to:

(1) issue its bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking;

(2) pledge to the punctual payment of said bonds issued under this part or part 45 and interest thereon an amount of the revenues of such undertaking (including improvements, betterments, or extensions thereto thereafter constructed or acquired) or of any part of such undertaking sufficient to pay said bonds and interest as the same shall become due, with such amount consisting of all or any part or portion of such revenue, and create and maintain reasonable reserves therefor.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4422. Determination of cost. The governing body of the municipality, in determining cost for purposes of 7-7-4421, may include all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal, and legal expenses; and interest which it is estimated will accrue during the construction period and for 6 months thereafter on money borrowed or which it is estimated will be borrowed pursuant to this part.

History: **En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; R.C.M. 1947, 11-2403(part).**

7-7-4423. Nature of revenue bonds. (1) No holder or holders of any bonds issued under this part shall ever have the right to compel any exercise of taxing power of the municipality to pay said bonds or the interest thereon.

(2) Each bond issued under this part shall recite in substance that:

(a) said bond, including interest thereon, is payable from the revenue pledged to the payment thereof; and

(b) said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation or provision.

History: **En. Sec. 8, Ch. 126, L. 1939; R.C.M. 1947, 11-2408.**

7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of such undertaking and shall revise such rates, fees, or charges from time to time whenever necessary so that such undertaking shall be and always remain self-supporting.

(2) The rates, fees, or charges prescribed shall be such as will produce revenue at least sufficient to:

(a) pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor; and

(b) provide for all expenses of operation and maintenance of such undertaking, including reserves therefor.

History: **En. Sec. 9, Ch. 126, L. 1939; R.C.M. 1947, 11-2409.**

7-7-4425. Use of revenue from undertaking. (1) Any municipality issuing bonds pursuant to this part for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking shall have the right to appropriate, apply, or extend the revenue of such undertaking for the following purposes:

(a) to pay when due all bonds and interest thereon for the payment of which such revenue is or shall have been pledged, charged, or otherwise encumbered, including reserves therefor;

(b) to provide for all expenses of operation and maintenance of such undertaking, including reserves therefor;

(c) to pay and discharge notes, bonds, or other obligations and interest thereon not issued under this part, for the payment of which the revenue of such undertaking is or shall have been pledged, charged, or encumbered;

(d) to pay and discharge notes, bonds, or other obligations and interest thereon which do not constitute a lien, charge, or encumbrance on the revenue of such undertaking and which shall have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of such undertaking; and

(e) to provide a reserve for betterments to such undertaking.

(2) Unless and until adequate provision has been made for the foregoing purposes, no municipality shall have the right to transfer the revenue of such undertaking to its general fund.

History: **En. Sec. 10, Ch. 126, L. 1939; R.C.M. 1947, 11-2410.**

7-7-4426. Authorization for undertaking and issuance of bonds. (1) The acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking may be authorized under this part.

(2) Bonds may be authorized to be issued under this part by resolution or resolutions of the governing body of the municipality:

(a) without an election; or

(b) when authorized by a majority of the qualified electors voting upon such question at a special election, should the governing body in its sole discretion choose to submit the question to the electorate.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).**

7-7-4427. Special election on question of issuing bonds. When the governing body has chosen to submit the question of issuing bonds to the electorate, the special election shall be noticed and conducted as provided in [7-7-4227 through 7-7-4233]. Said special election shall be held not later than the next municipal election held after the council or governing body of the municipality has by resolution or resolutions approved the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of any undertaking as provided in this part and ordered said special election.

History: **En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).**

Compiler's Comments

Commissioner correction. The bracketed references were repealed, either in part or in whole, by Sec. 407, Ch. 571, L. 1979. The brackets were added by the Code Commissioner, 1979. This section requires an amendment to provide proper referencing.

7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of said bonds may be applied and the use and disposition thereof;

(2) the use and disposition of the revenue of the undertaking for which said bonds are to be issued, including the creation and maintenance of reserves;

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing such municipality or any of its departments, boards, or agencies with the services, facilities, and/or commodities of said undertaking;

(4) the issuance of other or additional bonds payable from the revenue of said undertaking;

(5) the operation and maintenance of such undertaking;

(6) the insurance to be carried thereon and the use and disposition of insurance money;

(7) books of account and the inspection and audit thereof; and

(8) the terms and conditions upon which the holders of said bonds or any proportion of them or any trustee therefor shall be entitled to the appointment of a receiver by the district court, which court shall have jurisdiction in such proceedings and which receiver may enter and take possession of said undertaking; operate and maintain the same; prescribe rates, fees, or charges, subject to the approval of the public service commission of Montana; and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do.

History: **En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).**

7-7-4429. Remedies. The provisions of this part and any such resolution or resolutions shall be enforceable by any bondholder in any court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

History: **En. Sec. 5, Ch. 126, L. 1939; R.C.M. 1947, 11-2405(part).**

7-7-4430. Presumptions of validity of bonds. (1) Said bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same.

(2) The validity of said bonds shall not be dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of the undertaking for which said bonds are issued.

(3) The resolution authorizing said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

History: En. Sec. 6, Ch. 126, L. 1939; R.C.M. 1947, 11-2406.

7-7-4431. Liens arising from bonds. The resolution or resolutions shall specify and define the revenues or portion thereof which are appropriated and pledged for the security and payment of the bond principal and interest and the relative security of liens on the revenues in favor of bonds of one or more series or issues, whether issued concurrently or at different times.

History: En. Sec. 7, Ch. 126, L. 1939; amd. Sec. 2, Ch. 52, L. 1949; R.C.M. 1947, 11-2407.

7-7-4432. Details relating to revenue bonds. Bonds authorized to be issued under this part shall bear interest at such rate or rates not exceeding 9% per annum, payable semiannually; may be in one or more series; may bear such date or dates; may mature at such time or times not exceeding 40 years from their respective dates; may be payable in such place or places; may carry such registration privileges; may be subject to such terms of redemption; may be executed in such manner; may contain such terms, covenants, and conditions; and may be in such form, either coupon or registered, as such resolution or subsequent resolutions may provide.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4433. Sale of bonds. (1) Bonds authorized to be issued under this part shall be sold at not less than par.

(2) (a) Said bonds may be sold at private sale to the United States or any agency, instrumentality, or corporation thereof.

(b) Unless sold to the United States or agency, instrumentality, or corporation thereof, said bonds shall be sold at public sale after notice of such sale.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4434. Notice of sale of bonds. (1) Except as provided in subsection (2), the notice of sale of bonds required by 7-7-4433(2)(b) shall be published once at least 5 days prior to such sale:

(a) in a newspaper circulating in the municipality; and

(b) in a financial newspaper published in the city of New York, New York, or the city of Chicago, Illinois, or the city of San Francisco, California.

(2) In the event the bond issue is in an amount of less than $150,000, the bond issue shall be advertised at least 5 days prior to such sale:

(a) in daily newspapers circulating in Montana cities of 10,000 population or over, in lieu of advertising in a financial newspaper in New York, Chicago, or San Francisco; and

(b) also in a newspaper as specified in part 24 of chapter 5 if that newspaper is different from the daily newspapers circulating in Montana cities of 10,000 population or over.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

7-7-4435. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in such form and with such provisions as the governing body may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to this part. Said bonds and interim receipts or certificates shall be fully negotiable, as provided by the Uniform Commercial Code—Investment Securities.

History: En. Sec. 4, Ch. 126, L. 1939; amd. Sec. 2, Ch. 145, L. 1951; amd. Sec. 2, Ch. 38, L. 1957; amd. Sec. 1, Ch. 52, L. 1963; amd. Sec. 11-106, Ch. 264, L. 1963; amd. Sec. 11, Ch. 158, L. 1971; amd. Sec. 5, Ch. 234, L. 1971; amd. Sec. 4, Ch. 413, L. 1973; R.C.M. 1947, 11-2404(part).

Part 45

Municipal Refunding Revenue Bonds — Option 1

7-7-4501. Authority to issue refunding revenue bonds. (1) In addition to the powers which it now may have, any municipality shall have the power under this part to refund bonds issued for any of the purposes listed in 7-7-4421(1), whether issued under authority of part 45 or of any other applicable law.

(2) Refunding revenue bonds issued as authorized in this section shall be governed by all of the provisions of part 44 as fully as bonds issued for the initial financing of any undertaking and by the further provisions of this part.

(3) Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

History: (1)En. Sec. 3, Ch. 126, L. 1939; amd. Sec. 1, Ch. 52, L. 1949; amd. Sec. 1, Ch. 145, L. 1951; Sec. 11-2403, R.C.M. 1947; (2), (3)En. 11-2414 by Sec. 1, Ch. 50, L. 1936; Sec. 11-2414, R.C.M. 1947; R.C.M. 1947, 11-2403(part), 11-2414(part).

7-7-4502. Interest rates on refunding revenue bonds. (1) Except as provided in subsection (2), refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(2) Refunding bonds may bear interest at a rate lower or higher than the bonds refunded thereby if:

(a) they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient; or

(b) the refunding bonds are combined with an issue of new bonds for reconstruction, improvement, betterment, or extension and the lien of such new bonds upon the revenues of the undertaking must be junior and subordinate to the lien of the outstanding bonds refunded, under the terms of the ordinances or resolutions authorizing the outstanding bonds as applied to circumstances existing on the date of refunding.

History: **En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(3).**

7-7-4503. Exchange or sale of refunding revenue bonds. (1) Refunding revenue bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest.

(2) Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor except in accordance with the terms of such outstanding bond.

History: **En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(part).**

7-7-4504. Deposit of proceeds of refunding revenue bonds in escrow. (1) In any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company. The bank or trust company shall:

(a) have its principal place of business within or without the state;

(b) be a member of the federal reserve system; and

(c) have a combined capital and surplus not less than $1 million.

(2) The proceeds deposited in escrow shall be invested in such amount and in securities maturing on such dates and bearing interest at such rates as shall be required to provide funds sufficient to pay, when due, the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which such bond may be called for redemption and to pay and redeem the principal amount of each such bond at maturity or, if prepayable, at its earliest redemption date and any premium required for redemption on such date. The resolution or ordinance authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with the escrow fund shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. Such securities shall be purchased simultaneously with the delivery of the refunding bonds.

History: **En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(4).**

7-7-4505. Use of excess revenues and pledged reserves. (1) Revenues and other funds on hand in excess of amounts pledged by ordinances and resolutions authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment may be used to pay the expenses incurred by the municipality for the purpose of such refunding, including without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents.

(2) Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of such bonds and may be invested and disbursed, as provided in 7-7-4504, to the extent consistent with the ordinances or resolutions authorizing such outstanding bonds.

History: En. 11-2414 by Sec. 1, Ch. 50, L. 1936; R.C.M. 1947, 11-2414(5).

Part 46

Municipal Refunding Revenue Bonds Option 2

7-7-4601. Short title. This part may be cited as "The Revenue Bond Refinancing Act of 1937".

History: En. Sec. 1, Ch. 121, L. 1937; R.C.M. 1947, 79-1901.

7-7-4602. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Enterprise" means any work, undertaking, or project which the municipality is authorized to construct and from which the municipality derives revenues, for the refinancing or the refinancing and improving of which enterprise refunding bonds are issued under this part; and such enterprise includes all improvements, betterments, extensions, and replacements thereto and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

(2) "Federal agency" means the United States, the president of the United States, the federal emergency administrator of public works, or any agency, instrumentality, or corporation of the United States designated or created by or pursuant to any act or joint resolution of the congress of the United States or directly or indirectly owned or controlled by the United States.

(3) "Governing body" means, in the case of a city or town, the council, commission, or other body, board, officer, or officers having charge of the finances thereof.

(4) "Holder of bonds" or "bondholder" (or any similar term) means any person who is the bearer of any outstanding refunding bond, registered to bearer or not registered, or the registered owner of any such outstanding bond which is at the time registered other than to bearer.

(5) "Improving" means reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing, or improving or any one or more of the foregoing.

(6) "Law" means any act or statute (general, special, or local) of this state, including without being limited to the charter of any municipality.

(7) "Municipality" means any city or town of this state.

(8) "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates.

(9) "Refunding bonds" means notes, bonds, certificates, or other obligations of a municipality issued pursuant to this part or pursuant to any other law as supplemented by or in conjunction with this part.

(10) "Revenues" means all fees, tolls, rates, rentals, and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise.

History: **En. Sec. 2, Ch. 121, L. 1937; R.C.M. 1947, 79-1902(part); amd. Sec. 10, Ch. 212, L. 1979.**

7-7-4603. Scope of part. (1) This part constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts, or things by any governing body of any municipality or any board, officer, commission, department, agency, or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this part except as may be prescribed in this part.

(2) The powers conferred by this part shall be in addition and supplemental to and not in substitution for and the limitations imposed by this part shall not affect the powers conferred by any other law.

(3) This part is remedial in nature and shall be liberally construed.

History: **En. Sec. 16, Ch. 121, L. 1937; R.C.M. 1947, 79-1916.**

7-7-4604. Interpretation of part. Nothing in this part shall in any way be deemed to:

(1) alter the terms of any agreements made with the holders of any outstanding notes, bonds, or other obligations of the municipality;

(2) authorize the municipality to alter the terms of any such agreements;

(3) impair or authorize the municipality to impair the rights and remedies of any creditors of the municipality;

(4) authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt.

History: **En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(4), (5).**

7-7-4605. Authorization for refinancing and refunding revenue bonds. Any municipality shall have power and is hereby authorized to refinance or to refinance and improve any enterprise and for such purpose or purposes, to borrow money and issue refunding bonds from time to time.

History: **En. Sec. 3, Ch. 121, L. 1937; R.C.M. 1947, 79-1903.**

7-7-4606. Nature of refunding revenue bonds. (1) No recourse shall be had for the payment of the refunding bonds, interest thereon, or any part thereof against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

(2) The refunding bonds and interest thereon shall not be a debt of the municipality or a charge, lien, or encumbrance, legal or equitable, upon any property of the municipality or upon any income, receipts, or revenues of the municipality, other than such of the revenues of the enterprise as shall have been pledged to the payment thereof. Every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same except from said revenues.

History: En. Sec. 9, Ch. 121, L. 1937; R.C.M. 1947, 79-1909.

7-7-4607. Exemption from certain taxes for refunding revenue bonds. The refunding bonds and the income therefrom shall be exempt from taxation except inheritance, estate, and transfer taxes.

History: En. Sec. 10, Ch. 121, L. 1937; R.C.M. 1947, 79-1910.

7-7-4608. Refunding revenue bonds to be fully negotiable. Notwithstanding the form or tenor thereof and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be and shall be treated as fully negotiable within the meaning of and for the purposes of the Uniform Commercial Code—Investment Securities.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).

7-7-4609. Presumptions of validity of refunding revenue bonds. (1) Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof, any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof.

(2) The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued or by contracts made in connection with the improving of any such enterprise.

(3) Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this part, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this part.

History: En. Sec, 6, Ch. 121, L. 1937; R.C.M. 1947, 79-1906.

7-7-4610. Details relating to refunding revenue bonds. The refunding bonds may, as provided by resolution of the governing body of the municipality:

(1) be issued in one or more series, bear such date or dates, and mature at such time or times, not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, and, in any event, not exceeding 40 years from their respective dates;

(2) bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby;

(3) be in such denomination or denominations and be in such form, either coupon or registered;

(4) carry such registration and conversion privileges;

(5) be executed in such manner;

(6) be payable in such medium of payment and at such place or places;

(7) be subject to such terms of redemption, with or without a premium;

(8) be declared or become due before the maturity date thereof;

(9) provide for the replacement of mutilated, destroyed, stolen, or lost bonds;

(10) be authenticated in such manner and upon compliance with such conditions; and

(11) contain such other terms and covenants.

History: En. Sec. 5, Ch. 121, L. 1937; amd. Sec. 11-153, Ch. 264, L. 1963; R.C.M. 1947, 79-1905(part).

7-7-4611 through 7-7-4620 reserved.

7-7-4621. Resolution for issuance of refunding revenue bonds. (1) The refunding bonds shall be authorized by resolution of the governing body of the municipality. Such resolution may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution shall take effect immediately upon the adoption thereof.

(2) No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

History: En. Sec. 4, Ch. 121, L. 1937; R.C.M. 1947, 79-1904.

7-7-4622. Permissible covenants for refunding revenue bonds. (1) The governing body of any municipality shall have power, in addition to the other powers conferred by this part, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) limitations on the purpose to which the proceeds of sale of any issue of refunding bonds or any notes, bonds, or other obligations then or thereafter to be issued to finance the improving of the enterprise may be applied;

(b) limitations on the issuance of additional refunding bonds or additional notes, bonds, or other obligations to finance the improving of the enterprise and on the lien thereof;

(c) limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) the amount and kind of insurance to be maintained on the enterprise and the use and disposition of insurance money;

(e) pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(g) events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) the rights, liabilities, powers, and duties arising upon the breach by it of any covenants, conditions, or obligations;

(i) the vesting in a trustee or trustees of the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this part or duties imposed hereby;

(j) a procedure by which the terms of any resolution authorizing refunding bonds or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) the execution of all instruments necessary or convenient in the exercise of the powers granted by this part or in the performance of the duties of the municipality and the officers, agents, and employees thereof;

(l) refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted or at any time hereafter in force which may affect the duties or covenants of the municipality in relation to the refunding bonds, the performance thereof, or the lien of such refunding bonds;

(m) the purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds, or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds or as may tend to make the refunding bonds more marketable.

(2) Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act, or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: **En. Sec. 13, Ch. 121, L. 1937; R.C.M. 1947, 79-1913.**

7-7-4623. Security for refunding revenue bonds. (1) The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution of the governing body authorizing the issuance of the refunding bonds. Subject to the constitution of the state of Montana and to the prior or superior rights of any person, any municipality shall have power, by resolution of its governing body, to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

(2) (a) As additional security for any issue of refunding bonds hereunder or any part thereof, any municipality shall have power and is hereby authorized, by resolution of its governing body, to confer upon the holders of the refunding bonds all rights, powers, and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds, or other obligations for the refinancing of which such refunding bonds shall have been issued, including but not limited to the preservation of the lien of such notes, bonds, or other obligations without extinguishment, impairment, or diminution thereof.

(b) In the event any municipality exercises the power conferred by this subsection:

(i) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this subsection; and

(ii) each note, bond, certificate, or other obligation of the municipality to be refinanced by any such refunding bonds shall be kept intact and shall not be canceled or destroyed until the refunding bonds and interest thereon have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate, or other obligation has been refunded pursuant to the Revenue Bond Refinancing Act of 1937.

(3) All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number or date of bond, of sale, of execution, or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution authorizing the issuance of such refunding bonds.

History: En. Sec. 8, Ch. 121, L. 1937; R.C.M. 1947, 79-1908(1) thru (3).

7-7-4624. Use of fiscal agent. Any municipality shall have power, in connection with the issuance of refunding bonds:

(1) to appoint a fiscal agent;

(2) to provide for the powers, duties, and functions and compensation of such fiscal agent;

(3) to limit the liabilities of such fiscal agent;

(4) to prescribe a method for the resignation, removal, merger, or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History: En. Sec. 11, Ch. 121, L. 1937; R.C.M. 1947, 79-1911.

7-7-4625. Sale or exchange of refunding revenue bonds. (1) The refunding bonds may be sold or exchanged in installments at different times, or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time.

(2) The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates, or other obligations to be refinanced thereby.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(1).

7-7-4626. Details relating to sales of refunding revenue bonds. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par, at public or private sale, and in such manner and upon such terms as the governing body shall deem best for the interests of the municipality.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(3).

7-7-4627. Details relating to exchanges of refunding revenue bonds. (1) If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds, or other obligations of the municipality issued to finance or to aid in financing the acquisition, construction, improving, refinancing, or improving and refinancing of an enterprise.

(2) The refunding bonds may be exchanged for a like or greater principal amount of such notes, bonds, or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due.

(3) The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

History: En. Sec. 7, Ch. 121, L. 1937; R.C.M. 1947, 79-1907(2).

7-7-4628. Payment of bonds. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to pay or cause to be paid punctually the principal of every refunding bond and the interest thereon on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) to preserve and protect the security of the refunding bonds and the rights of the holders thereof and warrant and defend such rights against all claims and demands of all persons whomsoever;

(c) to hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution authorizing the issuance of the refunding bonds, or if such resolution shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution as modified.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (a), (d), (f), (2).

7-7-4629. Management of enterprise. (1) In order that the payment of the refunding bonds and interest thereon shall be adequately secured, any municipality issuing refunding bonds pursuant to this part and the proper officers, agents, and employees thereof are hereby directed and it shall be the mandatory duty of such officers, agents, and employees under this part and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) to operate the enterprise in an efficient and economical manner and establish, levy, maintain, and collect such fees, tolls, rentals, rates, and other charges in connection therewith as may be necessary or proper, which fees, tolls, rates, rentals, and other charges shall be at least sufficient, after making due and reasonable allowances for contingencies and for a margin of error in the estimates:

(i) to pay all current expenses of operation, maintenance, and repair of such enterprise;

(ii) to pay the interest on and principal of the refunding bonds as the same shall become due and payable;

(iii) to comply in all respects with the terms of the resolution authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds; and

(iv) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(b) to operate, maintain, preserve, and keep or cause to be operated, maintained, preserved, and kept the enterprise and every part and parcel thereof in good repair, working order, and condition;

(c) to pay and discharge or cause to be paid or discharged any and all lawful claims for labor, materials, and supplies which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof prior or superior to the lien of the refunding bonds or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(d) to keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than 10% of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

(2) None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 12, Ch. 121, L. 1937; R.C.M. 1947, 79-1912(1), (b), (c), (e), (g), (2).

7-7-4630. Right to receivership upon default. (1) Any holder of refunding bonds or trustee therefor shall have the right to apply in an appropriate judicial proceeding to the district court or any court of competent jurisdiction for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder or trustee therefor is seeking or has sought to enforce any other right or exercise any remedy in connection with such refunding bonds:

(a) in the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days; or

(b) in the event that the municipality or the governing body or officers, agents, or employees thereof shall fail or refuse to comply with the provisions of this part or shall default in any agreement made with the holders of the refunding bonds.

(2) Upon such application, the district court may appoint and if the application is made by the holders of 25% in principal amount of such refunding bonds then outstanding or any trustee for holders of such refunding bonds in such principal amount shall appoint a receiver of the enterprise.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(1).**

7-7-4631. Role of receiver. (1) The receiver appointed pursuant to 7-7-4630 shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage, and control the same and each and every part thereof and, in the name of the municipality or otherwise as the receiver may deem best, shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do.

(2) Such receiver shall:

(a) maintain, restore, insure, and keep insured the enterprise and from time to time make all such necessary or proper repairs as may seem expedient to such receiver;

(b) establish, levy, maintain, and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such receiver may deem necessary or proper and reasonable; and

(c) collect and receive all revenues and deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

(3) Such receiver shall, in the performance of the powers conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

History: **En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(2), (4).**

7-7-4632. Procedure to return enterprise from receiver to municipality. (1) Whenever all that is due upon the refunding bonds and interest thereon and upon any other notes, bonds, or other obligations and interest thereon having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein and all defaults shall have been cured and made good, the court may in its discretion, after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality.

(2) The same right of the holders of the refunding bonds to secure the appointment of a receiver exists upon any subsequent default as provided in 7-7-4630 and 7-7-4631.

History: En. Sec. 14, Ch. 121, L. 1937; R.C.M. 1947, 79-1914(3).

7-7-4633. Remedies of holders of refunding revenue bonds. (1) Subject to any contractual limitations binding upon the holders of any issue of refunding bonds or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of percentage of such holders, any holder of refunding bonds or trustee therefor shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) by mandamus or other suit, action, or proceeding at law or in equity, to enforce his rights against the municipality and its governing body and any of its officers, agents, and employees and to require and compel such municipality or such governing body or any such officers, agents, or employees to perform and carry out its and their duties and obligations under this part and its and their covenants and agreements with bondholders;

(b) by action or suit in equity, to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) by action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) to bring suit upon the refunding bonds.

(2) (a) No remedy conferred by this part upon any holder of refunding bonds or any trustee therefor is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by this part or by any other law.

(b) No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

(c) Every substantive right and every remedy conferred upon the holders of refunding bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

(3) In case any suit, action, or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned or shall be determined adversely to the holder of the refunding bonds or any trustee therefor, then and in every such case the municipality and such holder or trustee shall be restored to their former positions and rights and remedies as if no such suit, action, or proceeding had been brought or taken.

History: En. Sec. 15, Ch. 121, L. 1937; R.C.M. 1947, 79-1915.

CHAPTER 8

ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

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Part 1

General Provisions Related to Local Government

7-8-101. Authorization to transfer property between certain governmental entities. (1) A county, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city, town, or county in which located, shall have power to sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the county business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of such intent by publication once a week for 3 weeks in a newspaper published in such city or town or county in which located, shall have power to sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, which is not necessary for the conduct of the city or town business, without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, shall be distributed according to law. Such transactions shall be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county shall have power to trade with or purchase from any city, town, or political subdivision such property without an appraisal of the property traded or purchased.

(b) A city or town shall have power to trade with or purchase from any county or political subdivision such property without an appraisal of the property traded or purchased.

History: (1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1.

7-8-102. Authorization to deed county land to other governmental entities. (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

History: En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch, 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

7-8-103. Authorization for governmental and public entities to take property by gift or devise. (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

History: Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

7-8-104. Who may make gift or devise to governmental entities. (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.

(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

History: En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

Part 2

Joint City-County Building

7-8-201. Acquisition or construction and management of city-county building. A city and a county may, by contract, construct, purchase, or lease and manage a city-county building to house the offices of city government and county government.

History: En. Sec. 1, Ch. 45, L. 1967; R.C.M. 1947, 11-4201.

7-8-202. Contents of contract between city and county. The contract shall provide:

(1) for the proposed expenditure for the construction, purchase, or lease of the city-county building and the proposed cost of equipping and operating the building;

(2) for the management of the building by a method which will provide that the city and county shall each be represented and have an active part in the management of the building;

(3) that the management of the joint institution shall have such powers as will be necessary to accomplish the purposes of this part.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-203. Division of cost. The total cost of the joint institution shall be divided between the city and county in such manner as they shall determine.

History: En. Sec. 2, Ch. 45, L. 1967; R.C.M. 1947, 11-4202(part).

7-8-204. Bonding authority undiminished. This part shall not be interpreted as modifying or diminishing the bonding authority of counties or cities as provided by law.

History: En. Sec. 3, Ch. 45, L. 1967; R.C.M. 1947, 11-4203.

Parts 3 through 20 reserved

Part 21

County Buildings and Equipment

7-8-2101. Provision of rooms for county purposes. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to provide suitable rooms for county purposes when there are no necessary county buildings.

History: En. Subd. 7, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.6, R.C.M. 1935; R.C.M. 1947, 16-1006.

7-8-2102. Erection and maintenance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause to be erected, furnished, and maintained a courthouse, jail, hospital, civic center, youth center, park buildings, museums, recreation centers, and any combination thereof and such other public buildings as may be necessary.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-8-2103. Authorization to create county building commission. (1) The board of county commissioners shall have the power to create a commission for the management of such civic center, youth center, park buildings, museums, county parks, recreation centers, hospitals, or any combination of two or more thereof. Such commission shall be composed of the chairman of the board of county commissioners and five lay members to be appointed by the board. In cases where a commission has been appointed, the commission, together with the board, shall have the power to employ a manager.

(2) The terms of office for the first lay members of the commission shall be, respectively, one for 1 year, two for 2 years, and two for 3 years. On the expiration of such terms of figures 1, 2, and 3 years, their successors shall hold for 3 years each.

(3) All of the above persons shall serve without compensation.

History: En. Subd. 9, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.8, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1947; amd. Secs. 1, 2, Ch. 238, L. 1947; amd. Secs. 1, 2, Ch. 5, L. 1949; amd. Sec. 1, Ch. 76, L. 1957; amd. Sec. 1, Ch. 150, L. 1959; amd. Sec. 1, Ch. 130, L. 1973; R.C.M. 1947, 16-1008A(part).

7-8-2104. Insurance of county buildings. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to insure the county buildings in the name of and for the benefit of the county and shall have the power to use the proceeds of any insurance policy which may be paid by reason of a loss covered thereby for the purpose of rebuilding the structure lost or damaged or, if the fire insurance proceeds are less than $25,000, for building new structures or buildings.

History: En. Subd. 16, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.15, R.C.M. 1935; amd. Sec. 1, Ch. 116, L. 1953; R.C.M. 1947, 16-1018.

7-8-2105 through 7-8-2110 reserved.

7-8-2111. Inventory of county tools and equipment. It shall be the duty of the board of county commissioners to prepare and file with the county clerk and recorder an annual inventory covering all county tools, machinery, and equipment.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

7-8-2112. Written agreements for loan or lease of county tools and equipment. Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

History: En. Subd. 22, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.21, R.C.M. 1935; amd. Sec. 1, Ch. 144, L. 1949; R.C.M. 1947, 16-1024(part).

Part 22

Acquisition, Transfer, and Management of County Property

7-8-2201. Authorization for county to obtain property. The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to purchase, receive by donation, or lease any real or personal property necessary for the use of the county and to preserve, take care of, manage, and control the same.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).

7-8-2202. Appraisal required for certain purchases of real property. Unless otherwise provided, no purchase of real property exceeding the value of $100 must be made unless the value of the same has been previously estimated by three disinterested citizens of the county appointed by the district judge for that purpose, and no more than the appraised value must be paid therefor.

History: En. Subd. 8, Sec. 1, Ch. 100, L. 1931; amd. Sec. 1, Ch. 74, L. 1933; re-en. Sec. 4465.7, R.C.M. 1935; R.C.M. 1947, 16-1007(part).

7-8-2203 through 7-8-2210 reserved.

7-8-2211. Authorization to sell county property. (1) The board of county commissioners of the several counties in this state shall have the power to sell any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property.

(2) Whenever a county purchases equipment as provided in 7-5-2301 through 7-5-2308, county equipment which is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal as provided in 7-8-2214 or may be sold at public auction as provided in 7-8-2212, in the discretion of the board.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2212. Notice of sale and public auction required for certain sales. Unless otherwise provided, if the real or personal property sought to be sold is reasonably of a value in excess of $100 for real property or $2,500 for personal property, the sale shall be at public auction at the courthouse door after previous notice given by publication in a newspaper published in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2213. Terms of sale. (1) The sale shall be for cash or on such terms as the board of county commissioners may approve provided at least 20% of the purchase price shall be paid in cash. All deferred payments on the purchase price of any property sold shall bear interest at the rate of 6% per annum, payable annually, and may be extended over a period of not more than 5 years.

(2) No sale shall be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) No title to any property sold under the provisions of 7-8-2211 through 7-8-2220 shall pass from the county until the purchaser or his assigns shall have paid the full amount of the purchase price therefor into the county treasury for the use and benefit of the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2214. Appraisal required for certain sales. Unless otherwise provided:

(1) in all sales of property of a value in excess of $100 for real property and $2,500 for personal property, there must, before any sale, be an appraisal thereof by the board and at a price representing a fair market value of such property. Such appraised value shall be stated in the notice of sale.

(2) no sale shall be made at public auction or to any school district without public auction of any property unless it has been appraised within 3 months prior to the date of the sale.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2215. Procedure to challenge appraised value. (1) Any taxpayer who may believe that such appraised value is less than the actual value of the property may, at any time before the day fixed for the sale of such property, file with the board of county commissioners written objections to such appraised value.

(2) When any such objection is filed, it vacates the sale and the board must at once apply to the judge of the district court to have such property reappraised.

(3) (a) Upon such application, the district judge shall appoint for purpose of reappraisal three disinterested persons. Such appraisers, when appointed by the district judge and after filing their appraisal report with the county

clerk and recorder, shall be allowed $5 per day for each day necessarily employed in making such appraisal and their necessary and actual expenses.

(b) The appraisal of the persons appointed under subsection (3)(a) must be made and filed with the county clerk and recorder. The new appraisal or reappraisal shall be used in the next sale of such property.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2216. Sale of county property to school district. (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any real or personal property, however acquired, belonging to the county and which is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which shall represent a fair market value of such property.

(2) If the property to be sold to the school district is reasonably of a value in excess of $100 for real property and $2,500 for personal property, notice of the sale shall be given by publication in a newspaper in said county. The notice shall be published once a week for 4 successive weeks and posted in five public places in the county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2).

7-8-2217. Procedure for sale of property of lesser value. (1) If the property to be sold is reasonably of a value of less than $100 for real property and $2,500 for personal property, sale thereof may be had at either public or private sale, as in the discretion of the board of county commissioners may appear to be to the best interests of the county.

(2) If it be at public sale, notice shall be given by posting in five public places in the county at least 5 days before the date of sale.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2218. Procedure if property not sold at public auction. If no bid or offer is made for any property offered for sale at public auction, after notice and appraisal given as provided in 7-8-2212 and 7-8-2214, the board of county commissioners may, at any time thereafter, sell such property at private sale and may on such private sale accept as the purchase price therefor an amount not less than 90% of the appraised value thereof.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(part).

7-8-2219. Exchange of county land in case of failure to make sale. If within 1 year no immediate sale be had of real estate attempted to be sold under the provisions of 7-8-2211 through 7-8-2220, the board of county commissioners may make trades or exchanges of such real estate owned by the county for any other lands or real estate of equal value located within the same county.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(5).

7-8-2220. Use of sales proceeds for construction or alteration of county jail or hospital. The funds derived from the sale, in the discretion of the board of county commissioners, may be credited to a construction reserve account and thereafter used for capital outlay for present or future construction of or an addition to a courthouse or county jail or county hospital.

History: En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(6).

7-8-2221 through 7-8-2230 reserved.

7-8-2231. Authorization to lease county property. (1) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to lease and demise county property, however acquired, which is not necessary to the conduct of the county's business or the preservation of county property and for which immediate sale cannot be had. Such leases shall be in such manner and for such purposes as, in the judgment of the board, shall seem best suited to advance the public benefit and welfare.

(2) Except as provided in 7-8-2233:

(a) all such property must be leased subject to sale by the board; and

(b) no lease shall be for a period to exceed 10 years.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).

7-8-2232. Distribution of lease revenue. All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, shall be paid into the county treasury. On January 10 and July 10 in each year, the county treasurers shall distribute such revenue to the several county and trust and agency funds on the basis of the tax levy for the preceding calendar year.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).

7-8-2233. Special provisions relating to coal leases. (1) Leases for deposits of coal only or for coal and the surface above the same owned by any county or to which any county acquires title by tax title, tax deed, or otherwise may be for a period of 10 years and as long thereafter as coal is being mined and extracted from the leased property in commercial quantities.

(2) As to all such deposits of coal only or coal and surface, the provisions of the laws of Montana relating to the sale by the county commissioners of a county of property owned by the county or acquired by tax title or otherwise shall be suspended during the time any such lease or leases of coal only or coal and surface made under 7-8-2231 shall be in force and effect.

History: En. Subd. 28, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.27, R.C.M. 1935; amd. Sec. 1, Ch. 152, L. 1937; amd. Sec. 1, Ch. 11, L. 1959; R.C.M. 1947, 16-1030(part).

Part 23

Sale of Tax-Deed Land

7-8-2301. Auction sale of county tax-deed land. (1) Whenever the county shall acquire any land by tax deed, it shall be the duty of the board of county commissioners, within 6 months after acquiring title, to make and enter an order for sale of such lands at public auction at the front door of the courthouse.

(2) No sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board prior to making the order of sale.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).

7-8-2302. Notice of sale of tax-deed lands. (1) Thirty days' notice of the sale provided for in 7-8-2301 shall be given by publication in a newspaper printed in the county. Such notice shall be published once a week for 3 consecutive weeks and shall be posted in at least three public places in the county.

(2) Posted and published notice shall be signed by the county clerk, and one notice may include a list of all lands to be sold, the appraised value of the same, and the time and place of sale. The fair market value as determined under 7-8-2301 shall be stated in the notice of sale.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).

7-8-2303. Repurchase rights of taxpayer or successors. At any time before the time fixed for the first offering of property for sale pursuant to 7-8-2301, notice of which has been given as provided in 7-8-2302, the taxpayer or successor in interest or legal representative whose property shall hereafter be deeded to the county may purchase such property, subject to the reservations hereinafter provided, by payment to the county of the full amount of the taxes, penalties, and interest due on said land at the time of taking said tax deed. Such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945; R.C.M. 1947, 84-4190(part).

7-8-2304. Terms for sale of tax-deed land. (1) Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve.

(2) (a) If such sale is made on terms, at least 20% of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed 5 years. All such deferred payments shall bear interest at the rate of 8% per annum.

(b) If a sale is made on terms, the chairman of the board shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the department of revenue.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part).

7-8-2305. Deed of conveyance — reservation of mineral royalty. (1) Subject to the provisions of subsection (2), upon payment of the purchase price in full, together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser or his assigns or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold.

(2) The county may in the discretion of the board reserve not to exceed 6 ¼ % royalty interest in the oil, gas, other hydrocarbons, and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969; R.C.M. 1947, 84-4191(part).

7-8-2306. Distribution of sale and lease proceeds. The proceeds of every sale or lease under this part or part 25 shall be paid over to the county treasurer, who shall apportion and distribute the same in the following manner:

(1) (a) Upon a sale of such property, the proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the procurement of the tax deed and holding of the sale.

(b) Upon a sale of the property, if there be any amount remaining of such proceeds after the payment of the amount specified in subsection (1)(a) and such remainder is:

(i) in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county; or

(ii) is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

(2) Whenever tax-deed lands have been sold and the county has reserved a royalty interest, any sums of money received from such royalty interest shall be credited to the general fund of the county except that the board of county commissioners may allocate to the county road fund not more than 50% of the money received from reserved royalty interests.

(3) Upon a lease of the property, except as otherwise provided, the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease, shall be apportioned on the current year's levy and shall be credited as earnings of tax-deed property and not considered as a credit to tax-deed accrued accounts as in the case of the principal received from sales of tax-deed lands.

History: En. Sec. 6, Ch. 171, L. 1941; amd. Sec. 1, Ch. 81, L. 1943; amd. Sec. 1, Ch. 144, L. 1955; R.C.M. 1947, 84-4195; amd. Sec. 2, Ch. 105, L. 1979.

7-8-2307. Tax liability of purchased tax-deed lands. (1) On January 1 following the execution of such contract or deed, the land shall be subject to taxation in the name of the purchaser or his assignee.

(2) In the event the taxes are not paid and the same become delinquent, said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941; amd. Sec. 14, Ch. 388, L. 1975; R.C.M. 1947, 84-4192.

7-8-2308. Sale of lands of less than fifty dollar valuation and other than tax-deed lands. Property belonging to the county of the value of less than $50 and property of the county acquired by means other than by tax deed may be sold as provided by 7-8-2211 through 7-8-2220 and, except so far as they may conflict with the provisions of this part, 7-8-2211 through 7-8-2220 shall remain in force and effect. Nothing herein contained shall be construed as repealing 7-8-2401 through 7-8-2403.

History: En. Sec. 8, Ch. 171, L. 1941; R.C.M. 1947, 84-4197.

Part 24

Exchange of Tax-Deed Land With United States

7-8-2401. Authorization to exchange tax-deed land with United States for certain purposes. (1) All real property acquired by any county under tax title which in the judgment of the board of county commissioners is suitable for the production of trees or as a watershed or for other national forest purposes may be conveyed by deed to the United States by the board in exchange for government land or timber, if in the discretion of the board it is to the advantage and best interests of the county to make such exchange.

(2) The board is hereby authorized to accept from the United States for and on behalf of the county, as full compensation for such county land so exchanged, title to land or timber of the United States equal in value to the appraised value of the county land so exchanged for the same.

(3) No public notice of the intention to convey title to the United States to any of the property subject to this part shall be necessary. The board shall have authority to defray all expenses necessarily incident to such exchange.

History: (1), (2)En. Sec. 1, Ch. 150, L. 1935; re-en. Sec. 4487.2, R.C.M. 1935; Sec. 16-1132, R.C.M. 1947; (3)En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; Sec. 16-1135, R.C.M. 1947; R.C.M. 1947, 16-1132, 16-1135(part).

7-8-2402. Disposal of land and timber acquired by county pursuant to exchange agreement with United States. (1) Any timber acquired from the United States in any exchange may be disposed of by the county commissioners by agreement with the United States department of agriculture that such timber shall be cut and removed by any agency selected by the United States department of agriculture, with the understanding that the stumpage payments for timber so cut will be paid over to the county in cash as full compensation for the county land exchanged to the United States. The amount of such stumpage payments, so paid over, shall equal the appraised value of the county land exchanged for same, and such cash payments shall be deposited in the county treasury for the use of the county.

(2) All land and all timber not subject to the arrangement authorized in subsection (1) and acquired by the county under the provisions of this part may be sold by the board of county commissioners in the manner provided by law for the sale of county property, and the proceeds of such sale shall be deposited in the county treasury for the use of the county.

History: (1)En. Sec. 2, Ch. 150, L. 1935; re-en. Sec. 4487.3, R.C.M. 1935; Sec. 16-1133, R.C.M. 1947; (2)En. Sec. 3, Ch. 150, L. 1935; re-en. Sec. 4487.4, R.C.M. 1935; Sec. 16-1134, R.C.M. 1947; R.C.M. 1947, 16-1133, 16-1134.

7-8-2403. Effect of conveyance of land to United States. The execution by the board of county commissioners of a deed of conveyance to the United States of any county land conveyed under this part shall operate to discharge and cancel all tax levies, tax liens, and special assessments of every sort and kind against such land and to convey all of the county's title to such lands at the time of the execution of said deed.

History: En. Sec. 4, Ch. 150, L. 1935; re-en. Sec. 4487.5, R.C.M. 1935; R.C.M. 1947, 16-1135(part).

Part 25

Classification and Alternative Management of County Lands

7-8-2501. Purposes of part. The purposes of this part are:

(1) to authorize a board of county commissioners to establish criteria for the classification of unsold tax-deed lands and other county-owned lands, however acquired, and to classify such lands for retention or disposal in accordance with such criteria so that county-owned lands shall be used in the best interests of the county and for the public benefit and welfare;

(2) to encourage the application of a multiple use principle in the utilization and administration of such lands so that the administration of lands classified for retention can be coordinated with land use planning, zoning, grazing and agricultural land improvement, fish and wildlife habitat improvement and enhancement, recreation, access to other intermingled or adjacent multiple use areas, and for any other appropriate uses which are in the best interests of the county or which will advance the public benefit and welfare; and

(3) to grant sufficient powers to the board to enable the board to achieve the foregoing purposes.

History: En. 84-4190.1 by Sec. 1, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.1.

7-8-2502. Application of part. (1) Any lands offered for sale by the county commissioners of any county under 7-8-2301 and not sold at such sale, any lands concerning which the preferential right to purchase has been terminated and barred under the provisions of 7-8-2303, and any other lands owned by the county, however acquired, may, in the discretion and at the election of the board, be administered by the board under this part.

(2) The board may in its discretion elect to exercise all or any of the powers and authority granted to it by this part, and to the extent it so elects, the provisions of this part shall be controlling and shall supersede all conflicting provisions of other laws.

(3) The sale, exchange, lease, or issuance of licenses and permits of county lands as provided in this part shall extend only to those lands not necessary to the conduct of the county's business.

History: (1), (2)En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; Sec. 84-4192.1, R.C.M. 1947; (3)En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; Sec. 84-4192.2, R.C.M. 1947; R.C.M. 1947, 84-4192.1(part), 84-4192.2(part).

7-8-2503. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of county commissioners.

(2) "Multiple use" means:

(a) the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the county;

(b) the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(c) the use of some land for less than all of the resources;

(d) the harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land and with consideration being given to the relative values of the various resources and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output; and

(e) the use of said lands, where possible, to afford access in multiple use areas to federal and state lands.

History: **En. 84-4190.2 by Sec. 2, Ch. 540, L. 1975; R.C.M. 1947, 84-4190.2.**

7-8-2504. Classification of county lands. The board may:

(1) establish criteria for the classification of the lands referred to in 7-8-2502(1);

(2) classify such lands, surface and subsurface, for retention or disposal and for such purposes and uses as the board may determine are in the best interests of the county and for the public benefit and welfare, and in so doing, the board shall consider the multiple use potential of said lands and the potential of said lands as access to other intermingled or adjacent multiple use lands or areas.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(a), (b).**

7-8-2505. Rules for administration of county lands. The board may promulgate rules for the administration of such lands.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(1)(i).**

7-8-2506. Advisory committee. The board may appoint not less than three or more than five residents of the county to act as an advisory committee to the board in implementing the provisions of this part. The duties of the advisory committee are to be established by the board. The board may provide for the payment of expenses incurred by the advisory committee in the carrying out of their duties.

History: **En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(7).**

7-8-2507. Land management alternatives. The board may:

(1) (a) grant permits or licenses to use the lands in such manner as the board may determine and in the best interests of the county and for the public benefit and welfare; and

(b) fix the terms, conditions, and price of such permits or licenses;

(2) enter into cooperative use agreements with individuals, groups of individuals, corporations, associations, cooperative state grazing districts, the state of Montana, the United States of America, and any state or federal subdivision, department, bureau, commission, or agency, including but not limited to the Montana department of fish, wildlife, and parks, the bureau

of land management, conservation districts, and the Montana department of state lands;

(3) trade or exchange such lands with individuals or other governmental agencies, state or federal, such trades or exchanges to be made pursuant to terms, conditions, and procedures adopted by the board;

(4) (a) grant leases of the lands for such purposes and uses as the board may determine are in the best interests of the county, including the exploration and development of oil, gas, and other minerals; and

(b) fix the terms and conditions of such leases and the consideration to be paid by any lessee; and

(5) sell such lands or any part thereof pursuant to the procedures provided in this part.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part); amd. Sec. 2, Ch. 218, L. 1979.

7-8-2508. Details relating to leases, permits, and licenses. (1) A lease of lands under this part shall not be made for a consideration less than an amount equal to the taxes these lands would have levied upon them if they were private lands.

(2) Leases, permits, and licenses shall not extend for a period longer than 10 years, except that oil, gas, and other mineral leases may be for a term of 10 years and as long thereafter as oil, gas, or other minerals are produced in commercial quantities. However, the board may provide for the renewal of such leases, permits, and licenses.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).

7-8-2509. Improvements on leaseholds. (1) The board may authorize a lessee to place upon the lands improvements directly related to conservation of the land or necessary for proper utilization of the land for the purposes for which it is leased.

(2) (a) Whenever another person becomes the lessee of such land, such other persons shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession of such lands. The former lessee may, at the former lessee's option, remove or dispose of the movable improvements, but the same must be removed within 60 days from the date of the expiration of the lease. If not so removed, then all such improvements shall become the property of the county unless the board for good cause grants additional time for the removal thereof. Before a lease is issued to the new lessee, the new lessee shall show that the former lessee has been paid the value of the improvements as agreed upon by them or as fixed and determined as herein provided or that the former lessee has elected to remove the improvements.

(b) In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained by three arbitrators. One of the arbitrators shall be appointed by the former lessee, one by the new lessee, and the third by the two arbitrators so appointed. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the former lessee and the new lessee. The value of the improvements so ascertained and fixed by the arbitrators shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, the dissatisfied party may, within 10 days of being notified of the arbitrators' decision, appeal from that decision to the board. The decision of the board shall be final. Any costs incurred by the board in reexamining the decision of the arbitrators shall be borne by the former lessee and the new lessee in such proportions as the board may determine.

(3) The provisions of this section shall apply to the holders of permits or licenses for the use of county lands.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(3), (4).

7-8-2510. Special provisions relating to oil and gas development. (1) Subject to the provisions of subsection (2), when considered in the best interests of the county, the board may:

(a) enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas or both and for the apportionment of oil or gas royalties or both on acreage or other equitable basis; and

(b) modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties, and royalties in accordance with such pooling agreements and such unit plans of operation.

(2) Such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(8).

7-8-2511. Procedure for sale of county lands. (1) The board shall make an order for public auction of any lands classified for sale. Such sale shall be held at the front door of the county courthouse.

(2) Notice of the sale shall be given by publishing a notice in a newspaper published in the county once a week for 3 consecutive weeks preceding the date fixed for the sale. The first publication of the notice shall be made not more than 30 days prior to the sale date. If there is no newspaper published in the county, the notice shall be given by posting copies at three of the most public places in the county at least 20 days but not more than 30 days preceding the sale date. The notices shall describe the land to be sold and the appraised value thereof.

(3) No sale may be made for less than the appraised value of the land, as fixed by the board. The sale shall be for cash or on such terms as the board may approve provided at least 20% of the purchase price shall be paid in cash.

(4) The lessee, permittee, or licensee of any of the lands then subject to a lease, permit, or license shall have a preference to purchase the lands at an amount equal to that bid by the highest bidder at the sale.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(5).

7-8-2512. Procedure to exchange county lands. (1) Any of the lands classified for exchange by the board may be exchanged for any other lands pursuant to such procedures as the board may adopt. Any procedures adopted by the board for the exchange of land must include public notice as provided under 7-8-2511 and opportunity for public hearing on the proposed exchange.

(2) All such exchanges must be for equivalent value. If the lands sought to be exchanged are not of equivalent value, any difference may be equalized by a cash payment.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(6).

7-8-2513. Appraisal of land required. (1) The county commissioners shall, before they sell, exchange, or lease lands under the provisions of this part, cause such lands to be appraised by a qualified, independent person or persons, who may be but are not required to be an agent of the department of revenue, to determine the value of such lands for the purpose of such sale, exchange, or lease.

(2) For the purposes of this section, a renewal of the lease shall be considered an initial lease if the renewal is for a term exceeding 5 years.

History: En. 84-4192.2 by Sec. 4, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.2(part).

7-8-2514. Reservations of interest by county. (1) When granting a lease for oil, gas, or other mineral exploration or development, the board may reserve to the county a royalty interest as fixed by agreement between the board and the lessee.

(2) In trading, exchanging, or selling such lands, the board may make such reservations in favor of the county as the board considers proper, including but not limited to reserving to the county of any or all oil, gas, or other mineral or royalty interests; sand, gravel, clay, or other material; rights-of-way or easements for roads, utility lines, and other purposes or uses.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).

7-8-2515. Apportionment and distribution of revenues from land. All proceeds from any use or disposition of lands pursuant to the terms of this part shall be apportioned and distributed according to the provisions of 7-8-2306.

History: En. 84-4192.1 by Sec. 3, Ch. 540, L. 1975; R.C.M. 1947, 84-4192.1(part).

Part 26

County Forests

7-8-2601. Protection of forests. The board of county commissioners of any county may provide money for the purposes of forest protection, improvement, and management.

History: En. Sec. 105, Ch. 147, L. 1909; re-en. Sec. 4470, R.C.M. 1921; re-en. Sec. 4470, R.C.M. 1935; R.C.M. 1947, 16-1104.

7-8-2602. Authorization to create county forests. (1) The board of county commissioners of any county in Montana is hereby authorized to create county forests from any lands in such county which:

(a) are principally valuable for the timber thereon or for the growing of timber; and

(b) have been acquired by such county by tax deed and have been offered for sale at public auction and not sold or have been acquired by such county by exchange for lands acquired by tax deed.

(2) Such county forests shall be established by resolution of the board and may be discontinued by resolution of said board.

History: **En. Sec. 1, Ch. 70, L. 1945; R.C.M. 1947, 28-501.**

7-8-2603. Exchange of tax-deed lands for timber lands. After any lands acquired by the county by tax deed have been offered for sale at public auction and not sold, the board of county commissioners may exchange such lands for other lands which are principally valuable for the timber thereon or for the growing of timber if, in the opinion of such board, it is in the best interests of such county to acquire such other lands for the purpose of creating county forests or for the purpose of consolidating such lands with then-existing county forests.

History: **En. Sec. 2, Ch. 70, L. 1945; R.C.M. 1947, 28-502.**

7-8-2604. Procedure for sale of timber or other crops. (1) Subject to the requirements of subsection (2), the board of county commissioners may sell the timber crop and other crops of county forests under such rules as it may establish. The board may reject any or all bids, or it may award the sale to the highest responsible bidder.

(2) A notice of any proposed sale of timber in excess of 100,000 feet board measure shall be advertised at least once in a newspaper published in the county at least 30 days prior to the closing of bids as specified in said notice. The board shall receive sealed bids up to the hour of the closing of bids.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2605. Formal sale agreement. (1) Upon award of sale, the purchaser shall execute a formal agreement.

(2) The formal agreement shall:

(a) describe the area on which the timber is to be cut, the approximate amount to be cut by species, and the rate for each product of each species;

(b) stipulate that all timber shall be paid for in advance of cutting;

(c) fix a date for termination of the agreement;

(d) define rules of silviculture, cutting, utilization, scaling, and slash disposal; and

(e) incorporate such other rules as in the discretion of the board of county commissioners are essential to the perpetuation of the county forests.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2606. Bond to insure performance of agreement. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient securities, to the county in an amount equal to at least 20% of the estimated value of the timber sold.

History: **En. Sec. 3, Ch. 70, L. 1945; R.C.M. 1947, 28-503(part).**

7-8-2607. Procedure upon breach of agreement. Upon breach of any timber sale agreement, the board of county commissioners is authorized to suspend cutting or removal of the timber and, upon advice and counsel of the county attorney, to take such steps as are deemed by it necessary to adjust the breach or to liquidate the county's claim for damages or to submit the case to the county attorney for collection on the bond.

History: **En. Sec. 4, Ch. 70, L. 1945; R.C.M. 1947, 28-504.**

7-8-2608. Permits for domestic use of dead and down timber. Permits may be issued free of charge to residents and settlers of the county for dead, down, or inferior timber for fuel and domestic purposes, in such quantities and under such restrictions and regulations as the board of county commissioners may approve.

History: En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).

7-8-2609. Permits for small commercial timber harvest. Permits may be issued to citizens of Montana for commercial purposes at commercial rates without advertising, under such restrictions and rules as the board of county commissioners may approve, for timber in quantities of 100,000 feet board measure or less. Repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

History: En. Sec. 5, Ch. 70, L. 1945; R.C.M. 1947, 28-505(part).

7-8-2610. Distribution of proceeds of timber sales. The proceeds of every such sale or of the issuance of any such permit shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(1) The proceeds of each sale up to the amount of $10 shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the holding of such sale or the issuance of such permit.

(2) If there shall be any amount remaining of such proceeds and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose as the same would have received had such taxes been paid before becoming delinquent, and all excess shall be credited to the general fund of the county.

(3) If there shall be any amount remaining of such proceeds and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: En. Sec. 6, Ch. 70, L. 1945; R.C.M. 1947, 28-506.

7-8-2611. Construction of part. Nothing in this part shall be construed as repealing part 23 of chapter 8 or Title 76, chapter 13, parts 1 and 2.

History: En. Sec. 7, Ch. 70, L. 1945; R.C.M. 1947, 28-507.

Part 27

County Land Advisory Boards

7-8-2701. State policy for resource management. It is hereby declared to be the policy of the state of Montana:

(1) to promote the conservation of the natural resources of the state;

(2) to provide for the conservation, protection, and development of forage plants and for the beneficial utilization thereof for grazing by livestock, under such regulations as may be considered necessary;

(3) to put into crop production only such lands as are properly fitted therefor;

(4) to encourage the storage and conservation of water for livestock and irrigation;

(5) to place the farming and livestock industries upon a permanent and solid foundation;

(6) to extend preference in sales and leases of lands to resident farmers, stockmen, and taxpayers;

(7) to gradually restore to private ownership the immense areas of lands which have passed into county ownership because of tax delinquencies.

History: En. Sec. 5, Ch. 67, L. 1933; re-en. Sec. 4573.5, R.C.M. 1935; R.C.M. 1947, 16-1505.

7-8-2702. Definitions. (1) In this part, the term "board" shall mean the county land advisory board.

(2) In this part, the term "lands" shall mean all lands now owned by the respective counties which have been acquired by the counties through tax deed proceedings and any lands to be hereafter acquired by the same means and all lands acquired by the respective counties by deed, exchange, or in any manner whatsoever, excepting, however, such lands as are owned or may be acquired for the regular conduct of county affairs.

History: En. Sec. 2, Ch. 67, L. 1933; re-en. Sec. 4573.2, R.C.M. 1935; R.C.M. 1947, 16-1502.

7-8-2703. Creation of county land advisory boards. (1) There is hereby created in each county a department of county government of the state of Montana, to be known and designated as "the county land advisory board".

(2) The general purposes of this department shall be to cooperate with the board of county commissioners of each county in administering lands belonging to the respective counties.

History: En. Sec. 1, Ch. 67, L. 1933; re-en. Sec. 4573.1, R.C.M. 1935; R.C.M. 1947, 16-1501.

7-8-2704. Membership of land advisory board. The board of each county shall consist of five residents of the county to be appointed by the judge of the district court.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 12, Ch. 311, L. 1979.

7-8-2705. Term of office of board members. (1) The citizen members first appointed pursuant to 7-8-2704 serve the following terms:

(a) two for a 2-year term;

(b) two for a 4-year term; and

(c) one for a 6-year term.

(2) On the expiration of the terms of the initial appointees, the succeeding members shall be appointed for the term of 6 years.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part); amd. Sec. 13, Ch. 311, L. 1979.

7-8-2706. Compensation of board members. The members shall serve without pay.

History: En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; R.C.M. 1947, 16-1503(part).

7-8-2707. Organization of board — conduct of business. (1) The board shall, from its membership, select a chairman. The county clerk shall be the clerk of said board.

(2) The board shall hold regular meetings on the first Wednesday following the first Monday of each month and may hold meetings whenever deemed necessary upon call of the chairman or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The board may adopt whatever rules it deems proper for the conduct of its meetings.

(3) The county clerk, as clerk of the advisory board, shall keep the minutes of all meetings thereof and be custodian of all its records. It shall be the duty of the board to keep a record of the minutes of all meetings thereof in a suitable book, provided by the board of county commissioners for that purpose, and to preserve all important documents, maps, plats, and papers.

History: En. Sec. 4, Ch. 67, L. 1933; re-en. Sec. 4573.4, R.C.M. 1935; R.C.M. 1947, 16-1504.

7-8-2708. Function of land advisory board. (1) The board shall advise boards of county commissioners in the direction, control, care, management, appraisal, lease, sale, exchange, and disposition of all lands, when so requested by said board of county commissioners.

(2) The board may recommend the examination, classification, and appraisal of such lands as in its opinion have not previously been properly examined, classified, and appraised.

(3) The board may be called upon by boards of county commissioners to assist in making exchanges of lands with other owners.

History: (1)En. Sec. 3, Ch. 67, L. 1933; re-en. Sec. 4573.3, R.C.M. 1935; Sec. 16-1503, R.C.M. 1947; (2)En. Sec. 6, Ch. 67, L. 1933; re-en. Sec. 4573.6, R.C.M. 1935; Sec. 16-1506, R.C.M. 1947; (3)En. Sec. 9, Ch. 67, L. 1933; re-en. Sec. 4573.9, R.C.M. 1935; Sec. 16-1509, R.C.M. 1947; R.C.M. 1947, 16-1503(part), 16-1506, 16-1509.

7-8-2709. Grazing and agricultural uses of county lands. (1) The board may cooperate with boards of county commissioners in establishing grazing districts or entering into agreements with other landowners for the establishment of grazing districts whereby county lands may be leased either on a per-head or per-acre basis.

(2) The board may act in an advisory capacity in fixing the fees, terms, and conditions of grazing and agricultural leases.

History: (1)En. Sec. 7, Ch. 67, L. 1933; re-en. Sec. 4573.7, R.C.M. 1935; Sec. 16-1507, R.C.M. 1947; (2)En. Sec. 8, Ch. 67, L. 1933; re-en. Sec. 4573.8, R.C.M. 1947; Sec. 16-1508, R.C.M. 1947; R.C.M. 1947, 16-1507, 16-1508.

Parts 28 through 40 reserved

Part 41

Municipal Buildings

7-8-4101. Construction, lease, and management of municipal buildings. The city or town council has power to build or hire all necessary buildings for the use of the city or town and to heat and light the same.

History: En. Subd. 5, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.4, R.C.M. 1935; R.C.M. 1947, 11-905.

Part 42

Disposal and Lease of Municipal Property

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) Such lease or transfer shall be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) If the property is held in trust for a specific purpose, the sale or lease thereof must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.

(3) Nothing contained herein may be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore acquired for parks within the limitations prescribed by 7-16-4223.

History: En. Subd. 62, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 115, L. 1925; amd. Sec. 1, Ch. 20, L. 1927; re-en. Sec. 5039.61, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1937; R.C.M. 1947, 11-964; amd. Sec. 14, Ch. 311, L. 1979.

CHAPTERS 9 AND 10

RESERVED

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Part 42

Disposal and Lease of Municipal Property

7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) Any such lease or transfer shall be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(3) If the property is held in trust for a specific purpose, the sale or lease thereof must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.

(4) Nothing contained herein may be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city heretofore designated for parks within the limitations prescribed by 7-16-4223.

History: En. Subd. 63, Sec. 5039, R.C.M. 1921; amd. Sec. 1, Ch. 146, L. 1925; amd. Sec. 1, Ch. 28, L. 1927; re-en. Sec. 5039.63, R.C.M. 1935; amd. Sec. 1, Ch. 56, L. 1969; R.C.M. 1947, 11-964; amd. Sec. 54, Ch. 252, L. 1979.

CHAPTERS 9 AND 10

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